



RESOLVE™

# INSOLVENCY AND BANKRUPTCY JOURNAL

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# NEWS FROM THE INSTITUTE

## Workshops

S. No	Date	Subject
1	13th March, 2021	Managing corporate debtor as a going concern
2	27th March, 2021	Guide for CIRP Admission Applications

**Workshop I Managing Corporate Debtor as a Going Concern I Saturday, March 13, 2021 I 10:00 AM to 05:00 PM**

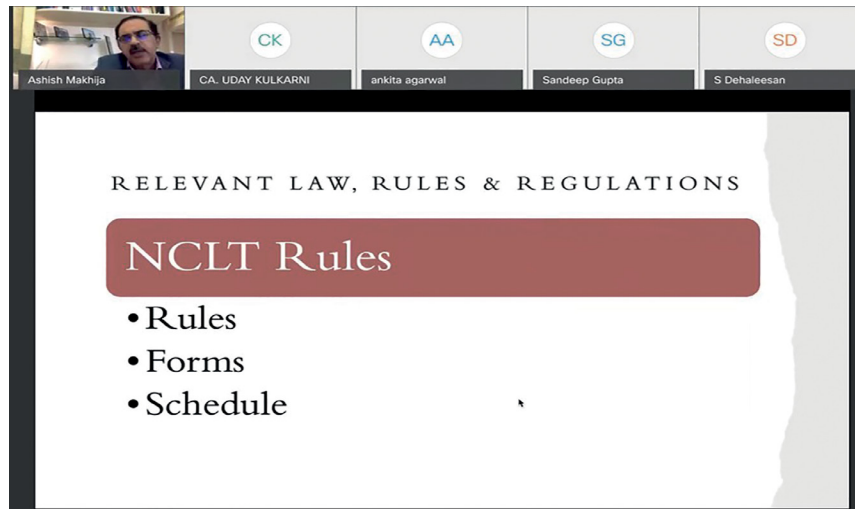
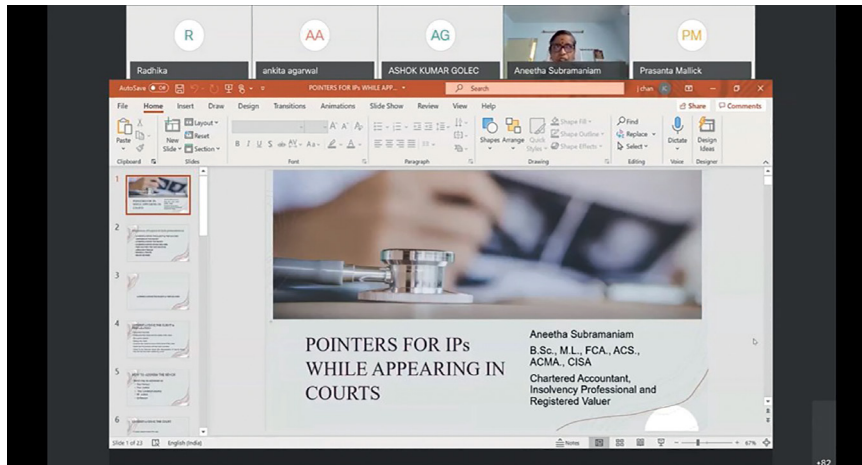
**Stabilising the operations**

*Roll up your sleeves but don't dive very deep in early days. The best view of the horizon is from the surface.*

*Let experts do the deep plunging.*

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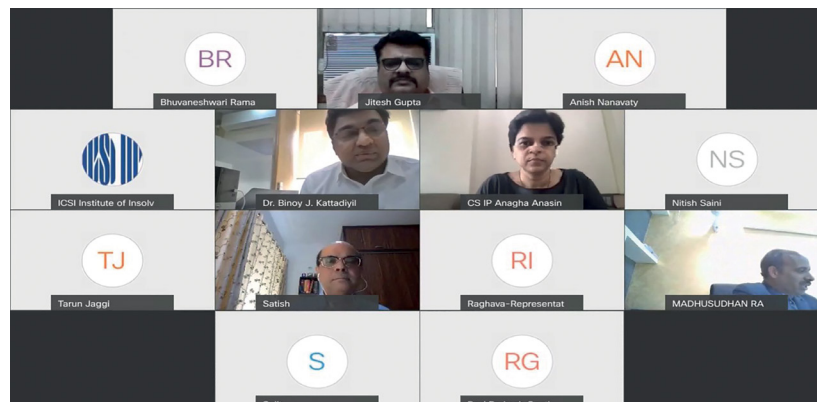
## Workshop | Guide for CIRP Admission Applications | March 27, 2021



## Round-table Discussion

S. No	Date	Subject
1	18th March, 2021	Statement of Best Practices on CoC Meetings

## Round-table Discussion | Statement of Best Practices on COC Meetings | March 18, 2021 | 02:00 PM





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- Cognizance for Extension of Limitation, In re  
(2021) 125 taxmann.com 151 (SC) • P-75

Section 5 of the Limitation Act, 1963 - Extension of prescribed period in certain cases - Whether to obviate difficulties faced by litigants on account of COVID-19 in filing petitions/applications/suits/appeals/all other proceedings within period of limitation prescribed under general law of limitation or under any special laws, it is directed that in computing period of limitation for any suit/appeal/application or proceeding, period from 15-3-2020 to 14-3-2021 shall stand excluded - Held, yes - Whether further, in case where limitation was expired during above period, all persons shall have a limitation period

of 90 days from 15.3.2021 and in event where actual balance period of limitation remaining, with effect from 15.3.2021, is greater than 90 days, that longer period shall apply - Held, yes (Para 2)

- **Arun Kumar Jagatramka v. Jindal Steel and Power Ltd.**

(2021) 125 taxmann.com 244 (SC) • P-78

Section 29A of the Insolvency and Bankruptcy Code, 2016, and section 230 of the Companies Act, 2013 - Corporate insolvency resolution process - Resolution applicant - Persons not eligible to be - Whether a person, who is ineligible under section 29A, would not be permitted to propose a compromise or arrangement under section 230 of Companies Act, 2013 - Held, yes (Paras 84 and 91)

- **Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta**

(2021) 125 taxmann.com 150 (SC) • P-83

Section 60 of the Insolvency and Bankruptcy Code, 2016 - Corporate person's Adjudicating Authorities - Adjudicating Authority - Whether where appellant, a government of Gujarat undertaking, sought to terminate Power Purchase Agreement (PPA) with corporate debtor only on account of CIRP being initiated against corporate debtor, NCLT/NCLAT could have exercised jurisdiction under section 60(5)(c) to stay termination of PPA by appellant, since allowing it to terminate PPA would certainly result in corporate death of corporate debtor due to PPA being its sole contract - Held, yes (Paras 164 & 165)

- **Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.**

(2021) 125 taxmann.com 194 (SC) • P-90

Section 30, read with section 31, of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Submission of - Whether where all actions of RP including acceptance of resolution plans after due date albeit before expiry of time line specified by IBC for completion of process,

have been consciously approved by CoC by a thumping majority of 84.36 per cent, in view of paramount importance given to decision of CoC which is taken on basis of 'commercial wisdom', NCLAT was not correct in law in interfering with commercial decision taken by CoC by a thumping majority of 84.36 per cent - Held, yes (Para 156)

Section 61, read with section 238A of the Insolvency and Bankruptcy Code, 2016, and section 14 of the Limitation Act, 1963 - Corporate Person's Adjudicating Authority - Appeals and Appellate Authority - Whether where Resolution applicant approached High Court in writ petition with specific grievance that procedure followed by NCLT, in approving resolution plan of another applicant one 'K', was in breach of principles of natural justice, provisions of section 14 of Limitation Act would be available to Resolution applicant for exclusion of period during which it was bona fide prosecuting a remedy before High Court from limitation period for preferring an appeal under section 61 - Held, yes (Paras 64 and 85)

Section 30, read with section 31, of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Submission of - Resolution applicant objected to participation of another applicant submitting plan after due date - Thereafter, CoC resolved to direct all applicants to submit revised plans - Whether it cannot be held that having participated by submitting revised plans as directed by CoC, resolution applicant was estopped from challenging process on ground of acquiescence and waiver for reason that if applicant had not responded to such direction it had to run risk of being out of fray in view of relevant process memorandum - Held, yes (Para 132)

- **Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund**

(2021) 125 taxmann.com 393 (SC) • P-93

Section 3(12), read with section 7 of the Insolvency and Bankruptcy Code, 2016, and section 8 of the Arbitration and Conciliation Act, 1996 - Corporate insolvency resolution process

- Default - Whether in any proceeding which is pending before Adjudicating Authority under section 7 of IBC, if such petition is admitted upon Adjudicating Authority recording satisfaction with regard to default and debt being due from corporate debtor, any application under section 8 of Arbitration Act, 1996 made thereafter will not be maintainable - Held, yes - Whether where petition under section 7 of IBC is yet to be admitted and, in such proceedings, if an application under section 8 of Act, 1996 is filed, Adjudicating Authority is duty bound to first decide application under section 7 of IBC as outcome of Insolvency Application will ipso facto determine section 8 Application - Held, yes - Respondent, financial creditor had filed an application under section 7 against petitioner, corporate debtor for its alleged default in redeeming Optionally Convertible Redeemable Preference Shares (OCRPS) subscribed by financial creditor under Share Subscription and Shareholders Agreement - However, while said Insolvency Application was sub-judice, petitioner filed an application under section 8 of Arbitration Act seeking directions from NCLT to refer parties to arbitration for settling their disputes, and simultaneously also filed Arbitration Petition under section 11 of Arbitration Act before Supreme Court seeking appointment of arbitrators - NCLT allowed section 8 Application and dismissed Insolvency Application, while noting that Arbitration Petition was pending adjudication before Supreme Court - Whether a dispute will not be arbitrable when a proceeding is *in rem* and insolvency proceedings are not *in rem* until Adjudicating Authority has applied its mind, recorded a default and admitted insolvency petition and mere filing cannot be taken as reason to trigger insolvency process in *rem* - Held, yes - Whether since Adjudicating Authority had categorically recorded that they were not satisfied that a default had occurred, dismissal of petition under section 7 of IBC was justified - Held, yes (Paras 23, 25 to 29 and 38)

- **P. Mohanraj v. Shah Brothers Ispat (P.) Ltd.**  
(2021) 125 taxmann.com 39 (SC) • P-95

Section 14 of the Insolvency and Bankruptcy

Code, 2016 read with sections 138 and 141 of the Negotiable Instruments Act, 1881 - Corporate insolvency resolution process - Moratorium - Whether for period of moratorium no section 138/141 of NI Act, 1881 proceeding can continue or be initiated against corporate debtor, moratorium provision contained in section 14 of IBC, 2016 would apply only to corporate debtor, natural persons mentioned in section 141 continuing to be statutorily liable under Chapter XVII of NI Act - Held, yes - Whether thus, where individuals or firms are concerned, recovery of any property by an owner or lessor, where such property is occupied by or in possession of individual or firm can be recovered during moratorium period, unlike property of a corporate debtor - Held, yes (Para 77)

Words & Phrases: Expression 'proceedings' as appearing in section 14 of IBC.

Expression 'prosecution' in first proviso to section 32A(1) of IBC.

- **Small Scale Industrial Manufactures Association (Regd.) v. Union of India**  
(2021) 125 taxmann.com 336 (SC) • P-97

Section 52 of the Banking Regulation Act, 1949 - Power of Central Government to make Rules - Whether no writ of mandamus can be issued directing Government/RBI to announce/declare particular relief packages and/or to declare a particular policy due to Covid-19 pandemic - Held, yes - Whether when a conscious decision has been taken not to waive interest during moratorium period and a policy decision has been taken to give relief to borrowers by deferring payment of instalments and so many other reliefs are offered by RBI and thereafter by bankers independently considering Report submitted by Kamath Committee consisting of experts, interference of Court is not called for - Held, yes - Whether there was no justification in policy decision of Central Government to restrict relief of not charging interest on interest with respect to loans upto Rs. 2 crores only - Held, yes - Whether once payment of instalment is deferred as per Circular, dated 27-3-2020, non-payment of instalment during moratorium

period cannot be said to be wilful and, therefore, there is no justification to charge interest on interest/compound interest/penal interest for period during moratorium - Held, yes - Whether, therefore, there shall not be any charge of interest on interest/compound interest/penal interest for period during moratorium from any of borrowers and whatever amount is recovered by way of interest on interest/compound interest/penal interest for period during moratorium, same shall be refunded or adjusted - Held, yes (Paras 19, 23 and 31)

- **Laxmi Pat Surana v. Union Bank of India**  
(2021) 125 taxmann.com 394 (SC) • P-100

Section 5(8), read with section 7, of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Financial debt - Whether an action under section 7 can be initiated by financial creditor (Bank) against a corporate person (being a corporate debtor) concerning guarantee offered by it in respect of a loan account of principal borrower, who had committed default and is not a 'corporate person' within meaning of Code - Held, yes - Whether expression 'debt' in section 3(11) is wide enough to include liability of a corporate person on account of guarantee given by it in relation to a loan account of any person including not being a corporate person in event of default committed by latter and it would still be a 'financial debt' of corporate person, arising from guarantee given by it, within meaning of section 5(8) - Held, yes - Whether where loan was offered to a proprietary firm (not a corporate person), action under section 7 can be initiated even against corporate person who had offered guarantee in respect of that transaction - Held, yes - Whether upon default committed by principal borrower, liability of company (corporate person), being guarantor, instantly triggers right of financial creditor to proceed against corporate person (being a corporate debtor) - Held, yes - Whether an application under section 7 filed after three years from date of declaration of loan as Non-performing Asset which is date of default, is not barred by limitation, if loan is acknowledged by principal borrower from time

to time - Held, yes (Paras 24, 27, 28, 41 and 42)

Section 3(8), read with section 3(7), of the Insolvency and Bankruptcy Code, 2016 - Corporate debtor - Whether if guarantor is a corporate person as defined in section 3(7), it would come within purview of expression 'corporate debtor', within meaning of section 3(8) - Held, yes - Whether principal borrower may or may not be a corporate person, but if a corporate person extends guarantee for loan transaction concerning a principal borrower not being a corporate person, it would still be covered within meaning of expression 'corporate debtor' in section 3(8) - Held, yes (Paras 20 and 21)

- **Sesh Nath Singh v. Baidyabati Sheoraphuli Co-Operative Bank Ltd.**  
(2021) 125 taxmann.com 357 (SC) • P-102

Section 238A, read with section 7, of the Insolvency and Bankruptcy Code, 2016 and section 14 of the Limitation Act, 1963 - Corporate insolvency resolution process - Limitation period - Financial creditor granted cash credit facility to corporate debtor - Corporate debtor committed default in repayment - Account of corporate debtor was declared NPA and financial creditor issued demand notice under section 13(2) of SARFAESI Act to corporate debtor - Corporate debtor filed a writ petition challenging said demand notice and High Court restrained financial creditor from taking any steps against corporate debtor under SARFAESI Act, till further orders - Thereafter, financial creditor filed application under section 7 - Corporate debtor raised a dispute that application had been filed after about 5 years and 5 months from date of accrual of cause of action, thus, said application was time barred - Whether IBC does not exclude application of section 6 or 14 or 18 or any other provision of Limitation Act to proceedings under IBC in NCLT/NCLAT - Held, yes - Whether section 14 of Limitation Act makes it clear that an applicant who has prosecuted another civil proceeding with due diligence, before a forum which is unable to entertain same on account of defect of jurisdiction or any other cause of like nature, is entitled to exclusion of time during



which applicant had been prosecuting such proceeding, in computing period of limitation - Held, yes - Whether Chief Metropolitan Magistrate or Judicial Magistrate, as case may be, exercising powers under SARFAESI Act, functions as a Civil Court/Executing Court and therefore, proceedings under SARFAESI Act would, be deemed to be civil proceedings in a Court - Held, yes - Whether thus, proceedings under SARFAESI Act would qualify for exclusion under section 14 of Limitation Act - Held, yes - Whether in view of above, financial creditor having bona fide, within period of limitation, initiated proceedings against corporate debtor under SARFAESI Act, time period from date of notice under section 13(2) of SARFAESI Act to when High Court had passed order against financial creditor was to be excluded in computing period of limitation for filing CIRP application - Held, yes (Paras 77, 84, 87, 88 and 99)

Words and Phrases : Expression 'Court' in section 14 of the Limitation Act, 1963 and Expression 'As far as may be' in section 238A of the Insolvency and Bankruptcy Code, 2016

• **Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.**

(2021) 125 taxmann.com 360 (SC)

• P-104

Section 31, read with sections 30 and 60 of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Approval of - Corporate debtor company JIL defaulted in several of its obligations, including those in completion of real estate projects and in payment of dues of lender banks - CIRP application filed by IDBI bank was admitted and moratorium was declared - Later on, resolution plan submitted by NBCC was approved by CoC with 97.3 per cent voting shares - NCLT approved said Resolution Plan with some modifications and directions while accepting some of objections like that of dissenting financial creditor bank and land providing agency - Objections were raised in instant appeal against above modification - Whether Adjudicating Authority has limited jurisdiction in matter of approval of resolution

plan and there is no scope for interference with commercial aspects of decision of CoC - Held, yes - Whether had Adjudicating Authority found any shortcoming in resolution plan *vis-a-vis* specified parameters, it should send resolution plan back to CoC only for re-submission after satisfying parameters delineated by I&B Code - Held, yes - Whether, therefore, instant resolution plan was to be send back to CoC - Held, yes (Paras 78 & 216(A))

Section 31, read with section 28, of the Insolvency and Bankruptcy Code, 2016, read with regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 - Corporate insolvency resolution Process - Resolution plan - Approval of - Whether there is no prohibition in scheme of I&B Code and CIRP Regulations that CoC could not simultaneously consider and vote upon more than one resolution plan at same time for electing one of available options - Held, yes (Paras 85 & 216(B))

Section 53, read with section 30 of the insolvency and Bankruptcy Code, 2016, and Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 - Corporate liquidation process - Assets, distribution of - Whether by direct payment in cash or by allowing recovery of amount *via* mode of enforcement of security interest, dissenting financial creditor is entitled to receive "amount payable" in monetary terms and not in any other term - Held, yes - Proposal in approved resolution plan for corporate debtor was to effect that if dissenting financial creditors would be entitled to some amount in nature of liquidation value, they would be provided such liquidation value in form of proportionate share in equity of real estate project for setup of which corporate debtor was constituted as a special purpose vehicle by two companies JAL and TEA and also transfer of certain land parcels belonging to corporate debtor - Dissenting financial creditor contended that it was entitled to receive cash payment as per liquidation value and that providing land and equity in lieu of requisite payment was entirely



impermissible - Adjudicating authority disapproved proposal in resolution plan as regards treatment of dissenting financial creditor and proceeded to modify resolution plan in manner that resolution applicant shall pay to dissenting financial creditor amount that was receivable in 12 monthly instalments together with interest - Whether adjudicating authority had not erred in disapproving treatment of dissenting financial creditor in resolution plan, but had erred in modifying terms of resolution plan and in not sending matter back to committee of creditors for reconsideration - Held, yes (Paras 121.2, 129, 130 & 216(D))

Section 31, read with section 30 of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Approval of - Whether if a claim is not made within stipulated time, same could not become part of information memorandum prepared by IRP and same would not enter into consideration of resolution applicant and also of CoC - Held, yes - Resolution plan approved by CoC provided for 100 per cent upfront payment to fixed deposit holders whose claims were forming part of admitted financial debt - NCLT proceeded to modify said terms of resolution plan as approved by CoC and had provided that resolution applicant shall make provision to clear even dues of unclaimed fixed deposit holders when they would make a claim and such a right was to remain in force as long as they were entitled to make claim under Companies Act, 2013 - Resolution applicant in instant appeal contended that such directions were wholly unjustified - Whether there was no justification in directions contained in order passed by NCLT, and same was to be annulled - Held, yes (Paras 136 & 216(E))

Section 31, read with section 30 of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Approval of - Whether home buyers as a class having assented to resolution plan, any individual homebuyer or any association of homebuyers could not maintain a challenge to resolution plan and could not be treated as

dissenting financial creditor or an aggrieved person - Held, yes - Whether where resolution plan comprehensively dealt with all assets and liabilities of corporate debtor, no housing project of corporate debtor could be segregated merely for reason that same had been completed or was nearing completion - Held, yes (Paras 175 & 216(I))

Section 31 of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Approval of - Corporate debtor JIL was an SPV constituted under a Concession Agreement between company TEA and company JAL for developing a real estate project - Petition for corporate insolvency resolution was admitted for Corporate debtor JIL - On other hand, pursuant to orders passed by instant Supreme Court in *Chitra Sharma v. Union of India* (2018) 92 taxmann.com 264/147 SCL 86, an amount of INR 750 crores was deposited in Supreme Court by JAL - While approving resolution plan for Corporate debtor JIL, NCLT directed this amount along with interest be transferred to NCLT; and, thus, placed this amount in asset pool of JIL - Whether said amount and accrued interest thereupon, being property of JAL, stipulation in resolution plan concerning its usage by JIL or resolution applicant could not be approved and, hence, that part of order of NCLT was to be set aside - Held, yes - Whether question as to whether any amount was receivable by JIL and/or its homebuyers from JAL against advance towards construction and with reference to admitted liability to tune of INR 195 crores as on 31-03-2020, would be determined by NCLT after reconciliation of accounts in terms of directions contained in instant judgment - Held, yes - Whether amount, if found receivable by JIL, be made over to JIL and remaining amount together with accrued interest be refunded to JAL in an appropriate account - Held, yes - Whether instant matter being related to CIRP of JIL, no other orders were to be passed in relation to amount that would be refunded to JAL because treatment of said amount in asset pool of JAL would remain subject to such orders as might be passed

by competent authority dealing with affairs of JAL - Held, yes - Whether Clause of resolution plan, providing for extinguishment of security interest of lenders of JAL could not have been approved by Adjudicating Authority, particularly in relation to security interest that had not been discharged; this part of order of Adjudicating Authority was to be set aside - Held, yes - Whether further, adequate provision was required to be made in resolution plan as regards utilisation of land bank of 758 acres, that had become available to JIL free from encumbrance in terms of judgment of instant Supreme Court in *Anuj Jain v. Axis Bank Ltd.* (2020) 114 taxmann.com 656 - Held, yes (Paras 216(J) & 216(K))

Section 61, read with section 31, of the Insolvency and Bankruptcy Code, 2016 - Corporate person's Adjudicating Authorities - Appeals and Appellate Authority - Successful Resolution applicant preferred an appeal against order before NCLAT approving resolution plan passed by CoC with majority decision with modification - Appellate authority, while issuing notice to unrepresented parties, made an interim order that approved resolution plan may be implemented subject to outcome of appeal but at same time, also provided that IRP might constitute an 'Interim Monitoring Committee' comprising of successful resolution applicant and three major institutional financial creditors, who were members of CoC - Whether appellate authority was not justified in providing for an Interim Monitoring Committee for implementation of resolution plan in question during pendency of appeals; hence, impugned order passed by NCLAT was to be set aside - Held, yes (Para 216(M))

Words and phrases: Expressions 'payment' and 'amount to be paid' as occurring in section 30(2) of the Insolvency and Bankruptcy Code, 2016

Interpretation of statutes: Rule of contextual interpretation

- **Committee of Creditors of EMCO Ltd. v. Mrs. Mary Mody**

(2021) 127 taxmann.com 694 (NCLAT-New Delhi)

• P-108

Section 28 of the Insolvency and Bankruptcy Code, 2016 - Approval of committee of creditors for certain actions - Whether Resolution Professional could raise interim finance only subject to approval of Committee of Creditors by a vote of 66 per cent - Held, yes - Adjudicating Authority *vide* impugned order directed Committee of Creditors of corporate debtor company to provide interim funds to Resolution Professional to run during CIRP period - Whether since, Committee of Creditors had by a majority vote rejected to raise any interim funds, Adjudicating Authority could not direct Committee of Creditors to do same - Held, yes - Whether therefore impugned direction given by Adjudicating Authority was contrary to provisions of IBC and was to be set aside - Held, yes (Para 28)

- **Kolla Koteswara Rao v. Dr. S.K. Srihari Raju**

(2021) 127 taxmann.com 344 (NCLAT-New Delhi)

• P-109

Section 5(8) of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Financial debt - Corporate debtor was allotted an industrial land by Telangana State Industrial Infrastructure Corporation (TSIIC) to setup a bulk drug unit, for which corporate debtor availed facility from Lender Bank, SBI for an amount, but on account of default in repayment, loan account was classified as an NPA - A One-Time Settlement (OTS) Agreement was entered into between Lender and corporate debtor for an amount - Corporate debtor and respondent entered into an Agreement of Sale whereunder, corporate debtor agreed to sell to respondent land allotted by TSIIC together with structure and plant and machinery in consideration of respondent paying OTS amount - Respondent paid an amount on behalf of corporate debtor to Lender - As per terms of Agreement to Sell, corporate debtor ought to obtain all necessary permissions including NOC from TSIIC and in event, corporate debtor had failed to do so, corporate debtor had to indemnify financial creditor - TSIIC cancelled allotment - Respondent issued notice to corporate debtor seeking repayment of amount paid by it to Lender on behalf of corporate debtor

along with interest - NCLT by impugned order admitted petition filed by respondent under section 7 holding that respondent was financial creditor of corporate debtor - Whether amounts paid by respondent on behalf of corporate debtor to Lender Bank for compliance of terms of OTS would fall within definition of financial debt - Held, yes - Whether respondent being a 'Purchaser' under an Agreement to Sell, executed pursuant to an OTS could claim to be a financial creditor as defined under section 5(7) - Held, yes - Whether therefore, petition under section 7 was rightly admitted - Held, yes (Paras 19, 22 & 23)

- **State Bank of India v. Visa Steel Ltd.**

(2021) 127 taxmann.com 696 (NCLAT- New Delhi)

- P-114

Section 7 of the Insolvency and Bankruptcy Code, 2016, read with section 35AA of the Banking Regulation Act, 1949 - Corporate insolvency resolution process - Initiation by financial creditor - Central Government vide Gazette Notification No. S.O. 1435(E), dated 5-5-2017 authorized Reserve Bank of India (RBI) to issue directions to any banking company or banking companies to identify specific cases on default for 'resolution' and if 'resolution' fails for initiation of proceedings under IBC - Based on gazette notification, RBI directed appellant-Bank to initiate proceeding under IBC, against some of defaulters including respondent-corporate debtor - Whether in view of above, by no stretch of imagination it could be said that direction given by RBI was without authorization from Central Government and, therefore, application under section 7 filed by appellant against corporate debtor was justified - Held, yes (Paras 72 and 85)

- **Ram Ratan Kanoongo v. Veda Kumar Nimbagal**

(2021) 127 taxmann.com 692 (NCLAT- New Delhi)

- P-166

Section 31, read with section 53 of the Insolvency and Bankruptcy Code, 2016 - Corporate

insolvency resolution process - Resolution Plan - Approval of - In pursuance to commencement of CIRP of corporate debtor, respondent-ex-director of corporate debtor submitted his claim with Resolution Professional (RP) seeking release of his claim towards payment of salary for period 23-1-2017 to 20-10-2017- RP partially admitted claim based on calculation of salary dues up to date of commencement of Corporate Insolvency Resolution Process i.e. 18-9-2017 and rejected claim for period 19-9-2017 to 20-10-2017 - Meanwhile, resolution plan for corporate debtor was approved by Adjudicating Authority - Thereafter, respondent filed application before Adjudicating Authority seeking payment of outstanding salaries i.e. from 19-9-2017 to 20-10-2017 - Whether any claim for CIRP period had to be raised before approval of a resolution plan and no direction could be issued to erstwhile Resolution Professional in respect of said claim - Held, yes - Whether further, successful resolution applicant could not be burdened with claim/ dues of corporate debtor - Held, yes - Whether thus, Adjudicating Authority had erred in issuing directions to erstwhile RP to make payment of salary to respondent - Held, yes (Paras 39 and 40)

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**P.K. MALHOTRA**

ILS (RETD.) AND FORMER  
LAW SECRETARY  
(MINISTRY OF LAW & JUSTICE,  
GOVT. OF INDIA)

## From Chairman's Desk

Dear Professional Member(s),

The COVID-19 pandemic has compelled people all over the world to make changes in their way of working and living. The year 2020 shall be remembered for Covid-19 pandemic and the consequent lockdown measures adopted by the Government. If I recall, the first quarter of the year was very difficult. But things started moving gradually from quarter-to-quarter and most of the economic activities slowly started getting back on track. The most striking feature of this period was that many services went from physical to digital. It forced us to communicate through and embrace the virtual world. The other most important feature of the year has been that all of us got some good time to focus on enhancing our skills through active learning. Learning, I believe, is one of the most critical needs for one to have an enriched existence. As we need food for our body, we need continuous learning to nurture our mind. The need is more critical when it comes to the professionals since they are the ones who are really the experts, and they have to always think ahead of the situation and act as troubleshooters. Just like food nourishes our body, continued learning nourishes our mind, and such lifelong learning is an indispensable tool for every professional. It is through our endeavour to seek and gain new knowledge and ideas that we can distinguish ourselves from the rest, and it is only when we embark on such a lifelong pursuit to



acquire new knowledge and fresh perspectives that we enable ourselves to build new skill sets and create new opportunities. This exercise becomes much more important for the Insolvency Professionals in view of the growing challenges ahead of them.

This month we saw a good number of legal developments coming in the form of judgments from Hon'ble Supreme Court. Infact on the first day of the month itself, in a landmark judgment delivered by Hon'ble SC (*P. Mohanraj v. Shah Brothers Ispat (P.) Ltd.* (2021) 125 taxmann.com 39 (SC)), a vexed issue has been settled concerning application of s. 14, IBC to the cheque bounce proceedings against the CD. The issue raised in the matter was whether the institution or continuation of a proceeding under Section 138/141 of the Negotiable Instruments Act can be said to be covered by the moratorium provision (s. 14, IBC). Answering in the affirmative, the Apex Court ruled that during the pendency of a CIRP, such proceedings can neither be instituted nor continued against the CD who may have allegedly committed the offense of cheque dishonour as envisaged by the provisions said s. 138/141 of the NI Act. The order further clarifies that the relief u/s. 14(1)(a) is, however, not apply to *natural persons* in charge of CD's affairs, but will only apply to the corporate entity or the artificial juristic person.

In another matter titled as *Jaypee Kensington Boulevard Apartments Welfare Association & v. NBCC (India) Ltd.* (2021) 125 taxmann.com 360, Hon'ble Apex Court, vide its orders dt. 24th March 2021, has come down heavily on the UP police, who, after registering a case against an IP, took the extreme step of arresting him. The order noted that police official dealing with the case is not familiar with the provision of privilege of interim resolution professional appointed by the Court, and directed for immediate release of the applicant IP. This order is undoubtedly a big relief and an assurance for the IPs who can now carry out their professional responsibilities in a fair manner and without any fear of coercive step being taken against them. In yet another landmark judgment (*Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta* (2021) 125 taxmann.com 150 (SC)), Hon'ble SC has ruled on the issue as to *whether the NCLT/NCLAT can exercise jurisdiction under the IBC over disputes arising from contracts such as the Power Purchase Agreement (PPA)*. The Court, after taking into account the IBC provisions (specifically s. 60(5)), the legal precedents and the peculiar facts of the case, rejected



the contention that such matters are outside the jurisdiction of NCLT. It further directed that for adjudication of disputes that arise *de hors* the insolvency of Corporate Debtor, the RP must approach the relevant competent authority.

In yet another decision of the Supreme Court (*Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.* (2021) 125 taxmann.com 194), it has been held that the NCLT/NCLAT cannot interfere with the commercial wisdom of CoC, except within the limited scope available u/s. 30/31, IBC. The judgment clarified that the legislative scheme of IBC is unambiguous, and the commercial wisdom of CoC is not to be interfered with, except under the limited scope (provided under ss. 30 and 31, IBC). Further, there has been another landmark decision (*Arun Kumar Jagatramka v. Jindal Steel and Power Ltd.* (2021) 125 taxmann.com 244) wherein Hon'ble SC has ruled that the prohibition placed by Parliament u/s. 29A and s. 35(1)(f), IBC is applicable to a scheme of compromise or arrangement u/s 230, Companies Act, 2013, when the company is undergoing liquidation under the IBC process.

Before I part with this message, may I request all the professional members to be very diligent in adopting all precautions to prevent the spread of this pandemic. Move out only when it is very necessary, and if you do, then make sure you double mask and sanitize regularly so as to ensure the safety and well-being of yourselves and everyone around you. With the national vaccination drive scheduled to commence in full swing, I urge all our members and their eligible family members to get themselves registered and get the vaccine.

Lastly, I welcome comments and suggestions from the professional members on our functioning which will provide us with valuable feedback on how to effect necessary improvements within our statutory mandate and the guiding framework.

Looking forward to meet you all very soon. Take care!

**DR. BINOY J. KATTADIYIL**

MANAGING DIRECTOR  
ICSI INSTITUTE OF INSOLVENCY  
PROFESSIONALS

## Managing Director's Message

**If you want to flower, you have to sink your roots into the earth**

Dear Professional Member(s),

As we sit in this last month of the financial year 2020-21, our memories of this tumultuous period remind us of many virtues that humanity did remember for centuries, but, in the course of events that took place in the past few decades, they were perhaps forgotten. As the financial year 2020-21 is drawing to a close now, I wish to use this opportunity to try and introduce somewhat subtler aspects of life into our interactions (through this medium of our monthly journal).

These are undoubtedly tough times, but there are very important lessons to learn from it too. These are times where inaction in certain areas of life has become more importance and relevance than our actions, especially in terms of our travelactions. The peculiar feature of this virus is that we ourselves are its carriers, and therefore, it is very necessary that we slow down a bit; this is the time to sit back, look at our lives, reflect upon it, and strategize the trajectory of

what we want our life to be. I believe that these aspects have always been there in our sub-conscious mind, but were perhaps not getting their due focus, attention and expression from us. Today, we are all unison in our desire that humanity needs a breakthrough from this adversity, and we are willing to do away with all our misunderstandings of what truly constitutes life. This has indeed made us all to work together in order to find an early solution to the problem. When life around us takes a serious turn, it is our wisdom which can protect and guide us!

Uncertainty has become a rule of the day now, and that is what is worrying us. We must realise that nothing in the outside world is certain, and that is what makes it challenging. *Uncertainty* means that things are changing, and the problem is that we have not been able to figure out as to which direction is the change happening. In other words, while every step is making us discover a new terrain, that terrain is not known to us. For all those who are on a look-out for new opportunities to work, there cannot be a better period than this. Those who have a vision will definitely be able to make a mark but turning their vision into a possibility. On the other hand, those who do not envision anything significant, will certainly find this to be a difficult period. Therefore, what we need to do is to get out of our constant state of compulsive reactions which unsettle us in uncertainties. Certainty is also sometimes seen as having attributes of a state of limbo. Essentially, it is believed that if there is certainty there is status quo. *Status quo* in a business world means no change and eventually no evolution. So, by seeking certainty, we only pitch for stagnation of life. On the other side, if things happen rapidly, we generally fail to find the balance to handle it well, and therefore, what we need to realise is that the issue is not essentially with uncertainty, but the problem is with our inner strength to handle uncertainty.

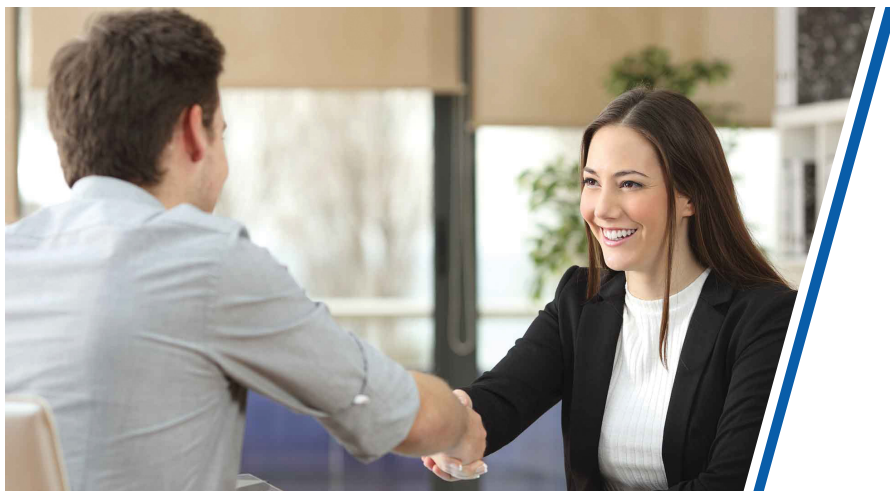
In the last year, as a nation, we adopted a strict lockdown approach initially in order to curtail spread of coronavirus outbreak. The attention was concentrated on expanding our infrastructure & health facilities. According to the Economic Survey 2020-21, the lockdown was a critical step towards *flattening the curve* and saving human lives. As a result, the nation was able to not only contain the spread (to the minimum), but was also able to prevent an early onset of second wave of the pandemic. Our efforts to find a vaccine yielded results, though it is also

true that this adversity is unwilling to succumb to our efforts. The second phase of the Covid-19 vaccine drive started on March 1, 2021 for all people over the age of 60, as well as those aged 45 and above who have co-morbid conditions. The country administered >6.5 crore first doses (4.8% of the current population) and 1 crore second doses (0.7% of the current population). The vaccination coverage is now expected to expand further with the third phase of the vaccination drive (starting from April 1, 2021) including individuals aged 45+.

Today, we see restricted economic activity because of which we get worried as to how will the future work out. While economy is and will always remain a very important tool and a medium to ensure human well-being, an awareness about the dynamism of life persuades us to go beyond the boundaries and discover other ways too for human well-being. In other words, while wealth is definitely one of the tools to ensure human well-being, it is not the be-all-end-all means. Therefore, while we gradually work-out and move towards finding a better solution to the problems that we are faced with, it is extremely important for all of us to realise as to what are those different ways in which we can make this planet a better place to be.

I am sure that we all shall very soon overcome this challenge, and our lives and priorities thereafter shall have taken a completely different shape.

I wish and pray for good health of all.



## INTERVIEW



**MR. R P GANTI**

*Insolvency Professional*

**1. At the outset, let me start by asking your views about your overall experience as an Insolvency professional in terms of assignments handled, fees received, obstacles faced while handling processes, scope of Insolvency and Bankruptcy Code.**

To put it in a few words - challenging but at the same time a great learning experience. All the expected obstacles were there – limited co-operation from directors/promoter; absence of information; absence of employees to give answers; no cash flows; inordinately delayed payment of fees and expenses; no EOLs; attachment proceedings under special acts.

**2. Since before becoming an insolvency professional you were working as a Management Consultant, how practicing as an Insolvency professional has impacted your consultancy practice? How are you managing both the professions?**

It has not been very difficult in settling into insolvency practice since there have been obvious benefits of management experience and understanding of corporate practices and issues, including those related to working in a strained cash



flow environment. In fact, especially when it comes to managing a corporate debtor with actual ongoing operations, a management background is probably most helpful. As far as I am concerned, the experiences of one actually add value to the other profession.

### **3. How different is Insolvency profession from other professions?**

It is different in 3 main aspects: (a) Private citizen being tasked with public duty and bestowed with significant authority and powers; (b) The necessity to be fair, transparent and adhere to procedures and guidelines in a manner which is visible to stakeholders involved; (c) The requirement of reporting to multiple authorities – IPA; IBBI; Tribunal – while adhering to tight timelines. The only other profession (outside of military and law enforcement) which probably involves a higher degree of mental stress is that of a surgeon or a health worker in an epidemic situation.

### **4. How did you manage your ongoing assignments of CIRPs during this COVID outbreak?**

I believe all IPs and other stakeholders quickly managed to embrace the available technology platforms and to the extent of consultation and discussions we did not face much hurdles. However, activities requiring travel or physical presence were definitely impacted resulting in timelines being missed. The overall impact on the work of an IP would depend on the individual circumstances as well as stage of the process. In one matter where I was involved in a support role, the RP held

more than 10 CoC meetings during the Covid affected period and a resolution plan was discussed, modified, voted upon and submitted to the AA for approval

### **5. What are your views on framework of Pre-packaged Insolvency Resolution Process? How it will impact the overall functionality of Insolvency and Bankruptcy Code?**

It is an excellent scheme for the honest promoter facing genuine problems which a fair restructuring scheme could resolve. Over time, and if promoted properly, it should result in faster resolutions and reduction of backlog before the Tribunal.

### **6. How far your expectations from the Judiciary and regulators in the insolvency sphere have met? Do you have any suggestions for the Government, judiciary and regulators to strengthen Insolvency and Bankruptcy regime?**

Since I have had the advantage of working in industry for more than 3 decades, most of it in stressed companies, I did not have any unrealistic expectations. Personally, I think most of the institutions involved have performed quite well. Delays caused by legacy issues and litigative promoters cannot be ascribed to faults in the system. That being so, I would say that relying on the old techniques of managing judicial and other processes when dealing with an innovative law like the IBC, is not something which will yield desired results. Especially when it comes to working of the Tribunals, adoption of available technologies and

template based orders for routine matters (including admission of applications for commencement of insolvency resolution or liquidation) would greatly assist in increasing productivity and disposal rates.

**7. How do you foresee India's prospects of improving its ranking of World Bank's Resolving Insolvency in the coming years?**

The way the process is currently designed, it is too long, cumbersome and difficult to respond to with the information easily accessible to a respondent. My view is that if we get our processes - administrative and judicial - right, improvement in ranking will follow. We somehow seem to be too obsessed with enhancement in rankings without putting commensurate thought and effort into the improvements required to be achieved in the processes concerned

**8. Any advice to the prospective aspirants or Fresh Insolvency Professionals who are seeing their career in Insolvency Law?**

Come in with eyes open but do not expect to depend solely on this profession as it may not give enough work

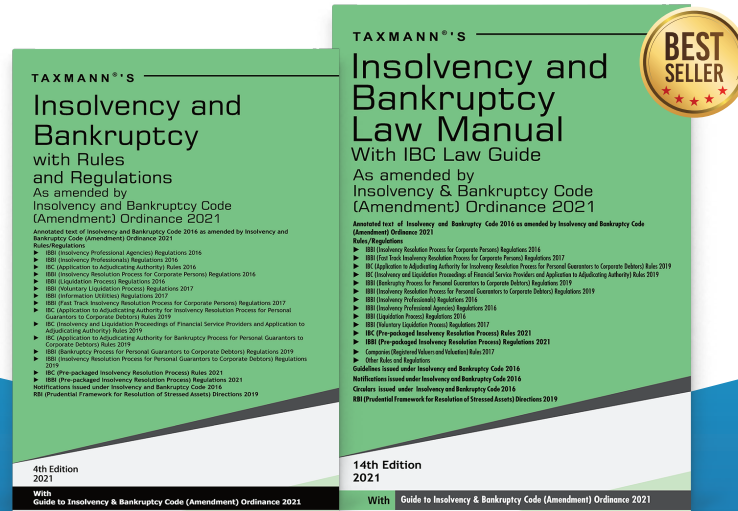
**9. Lastly, how significantly do you think the ICSI Institute of Insolvency Professionals (ICSI IIP) serves the profession of Insolvency Professionals?**

As far as organising events and programmes related to knowledge enhancement of IPs is concerned, I think the institute is doing a great job. I would like to propose that the ICSI IIP management also consider developing and organising programmes targeted at potential members of the CoC (banks and other lenders)

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# Insolvency and Bankruptcy Code

Amended, Updated & Annotated text of Insolvency & Bankruptcy Code 2016



SCAN & BUY NOW



SCAN & BUY NOW

As Amended by the  
Insolvency and Bankruptcy Code  
(Amendment) Ordinance 2021

Updated till  
15<sup>th</sup> May 2021

	IBC Law Manual	IBC with Rules & Regulations
Guide to Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021	✓	✓
Tables showing enforcement of Provisions of IBC	✓	✓
Coverage of provisions of other Acts referred in the IBC	✓	✓
Previous Amendment at a Glance	✓	✗
Coverage of Rules & Regulations	All	Limited
Guidelines issued under the IBC	✓	✗
Notifications issued under the IBC	✓	✓
Circulars issued under the IBC	✓	✗
Coverage of RBI directions	✓	✓



## Entertainment of Claims under CIRP



**CA MANISH SUKHANI**  
(Insolvency Professional)

*This article attempts to answer whether a Resolution Professional should entertain claims received after the period of 90 days as stipulated in [Regulation 12\(2\)](#) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") and also touches upon some other provisions related to claims which haven't caught so much of attention.)*

**Section 13** of the Code requires the Adjudicating Authority to pass an Order directing publishing of a public announcement of the initiation of corporate insolvency resolution process and calling for the submission of claims under **Section 15**. **Section 15** of the Code requires this public announcement to contain the last date for submission of claims, as may be specified. Notably, 'as may be specified' in **Section 15** was added by Act No. 26 of 2018, w.e.f. 6-6-2018, thus settling the authority of the Board to define the last date for submission of claims. The Board specified not one, but two dates in the CIRP Regulations.

The first date is provided in **Regulation 6**. It provides fourteen days from the date of appointment of the interim resolution professional to be the last date for submission of proofs of

claim in the public announcement and this is reaffirmed in **Regulation 12 sub-regulation (1)**, where it says that subject to sub-regulation (2), a creditor shall submit claim with proof on or before the last date mentioned in the public announcement. Further affirmation is provided in **Regulation 40A**, where the model timeline for the CIRP is provided and where the suggested timeline for submission of claim is mentioned in the unnumbered 3<sup>rd</sup> row of the table as T+14, perhaps, assuming that the appointment of the IRP takes place on the day of the Order of Admission. The claims-related exercise during CIRP is required for constitution of the committee of creditors. It should be done at the earliest so that the Corporate Debtor gets its steering team for most part of the process. Hence, a short date in the public announcement for submission of claims.

The second date is provided in **sub-regulation (2) of Regulation 12**. The sub-regulation states that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the Interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date. This sub-regulation was introduced by Notification No. IBBI/2018-19/GN/REG031, dated 3<sup>rd</sup> July, 2018 (w.e.f. 04-07-2018) by substituting the then existing sub-regulation which provided a creditor time till the approval of a resolution plan by the committee to submit proof of claim. Again, the timeline model in **Regulation 40A** reaffirms this second date for submission of claims in the unnumbered 4<sup>th</sup> row of the table by mentioning the latest timeline as T + 90.

'TWO LAST DATES' makes an impression of being oxymoron. It is not. The last date is the one in the public notice. The 90 days' time clause in sub-regulation (2) provides the buffer/ grace period to creditors to submit claims. Consider it as a step to balance the interests of all stakeholders. Perhaps, for the same reason, *i.e.* to balance the interest of all stakeholders, the Board amended the Regulation and changed the time to 90 days from commencement of CIRP from the time till the approval of a resolution plan by the committee. This change serves primarily the interest of the Process itself, and thus, all stakeholders. Let's examine this submission, but before that, a look at some other relevant provisions in the Regulation.

**TWO LAST DATES makes an impression of being oxymoron**

Respective proviso to **Regulation 7**, **Regulation 8** and **Regulation 9** provides that a person claiming to be an operational creditor other than workman or employee of the corporate debtor, a person claiming to be a financial creditor other than a financial creditor belonging to a class of creditors, or a person claiming to be a workman or an employee of the corporate debtor, as the case may be, can submit supplementary documents or clarifications in support of their claim before the constitution of the committee. Notably, no such provision exists in the Regulations for claimants who are financial creditor belonging to a class of creditors or other creditors. Is the Regulation discriminating against these creditors?

**Is the Regulation discriminating against some creditors?**



A strict lexical deduction of the provision contained in [Reg 12\(2\)](#) read with the proviso to [Regulations 7, 8 and 9](#) would suggest that if a creditor has NOT failed to submit, *i.e.* actually submitted claim within the time stipulated in the public notice, then he will get time to submit supplementary documents or clarifications till the time committee is constituted (*i.e.* T+21), whereas those who have failed to submit the claim as stipulated in the public notice can submit their claims till T + 90. This sounds unfair to the claimants making their claim within the time provided in the public notice. Denying opportunity to submit supplementary documents or clarifications to the claimants filing their claims after the time in the public notice also seems unwarranted. The Board may re-look at these provisos and evaluate its continuance in the regulatory book if it's not serving any practical purpose on the ground or issue a clarificatory note apprising the IPs as to how they should act on these provisos.

**The Board may re-look at these provisos**

Let us return to the amended [Regulation 12\(2\)](#). The claims-related exercise has greater sense and meaning if the CIRP ends with a successful resolution plan. Claims submitted and admitted have no significance if the CIRP is withdrawn under [Section 12A](#) of the Code or the process ends up in liquidation, as then, there will be a fresh invitation to submit claims; a whole new claims-related exercise will start and those who may have missed the bus during CIRP gets another shot to catch it.

The resolution professional shall prepare an information memorandum in such form

and manner containing such relevant information as may be specified by the Board for formulating a resolution plan ([Section 29\(1\)](#)). A resolution applicant may submit a resolution plan prepared on the basis of the information memorandum ([Section 30\(1\)](#)). Under [Regulation 36](#), the information memorandum shall contain a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims. [Section 30\(2\)](#) requires resolution plan to provide for payments of operational and certain financial debts in a specified manner.

[Regulation 36B](#) provides a minimum of 30 days' time to a prospective resolution applicant from the date of receipt of the Information Memorandum ("IM"), Request for Resolution Plan ("RFRP") and the Evaluation Matrix ("EM") to formulate its resolution plan. The Regulation further provides that if there is any modification in the RFRP or the EM, the period of 30 days will re-start from the date of the modification. In comparison to the RFRP or the EM, the IM is a much more important and basic document to formulate the resolution plan, and perhaps for this reason, the Regulation does not even contemplate a situation where the IM itself can be modified after its issuance to the prospective resolution applicant. But if a modification to the IM is assumed to be allowed after its issuance to the prospective resolution applicant, will the call for fair play not require the applicant to be given at least 30 days' time from the date of

**Change in the List of Creditors is a modification of the Information Memorandum**

change in the IM? Any change in the list of creditors is effectively a change in the IM and should be avoided to the extent possible. Combined reading of these provisions signifies the importance of claim-related exercise to provide adequate and timely information required by a resolution applicant to formulate a resolution plan. Hence, instead of allowing time till the time of approval of a resolution plan, as was the case earlier, the Regulation was amended and the T+90 days' timeframe was rightly introduced.

The legal provisions as per the Code and the Regulation made thereunder and the rationale behind the same, as discussed above so far, are generally understandable and acceptable. A major twist comes with the order passed in **"Twenty First Century Wire Rods Ltd. – CP (IB) No. 737 (PB)/2018"** by the Hon'ble National Company Law Tribunal wherein the Applicant had filed an application seeking directions to the RP to consider its claim which was filed after a delay beyond 90 day period. In that matter, the insolvency commencement date was 12<sup>th</sup> September 2018 (*i.e.*, after the amendment to [Regulation 12\(2\)](#) was carried out) and the Claim was filed by the Applicant on 5<sup>th</sup> of March 2019, *i.e.*, beyond the period of 90 days as prescribed under the amended Regulation. Moreover, when the application was being heard, the CoC was still in the process of considering the resolution plan submitted. Therefore, the National Company Law Tribunal held that since the Corporate Insolvency Resolution Process is still under progress and no resolution plan has been approved by the CoC, the RP cannot reject the claim on the ground of delay.

**NCLT: RP cannot reject the claim on the ground of delay**

The above-stated legal position was further cemented by the directions issued by the Hon'ble National Company Law Tribunal in the matter titled *"Edelweiss Asset Reconstruction Co. (P.) Ltd. v. Adel Landmarks Ltd. – CP (IB) No. 1083 (PB)/2018"* vide Order dated 06.06.2019 while deciding a similar application for condonation of delay, wherein it held that *"We have repeatedly held that rejection of claim on the ground of delay is not sustainable because the provision has been held to be directory. In that regard reference may be made to the orders dated 01.05.2019 passed in CA-727 (PB)/2019 in CP. No. (IB)-737 (PB)/2018, Twenty First Century Wire Rods Ltd. & in the case of the corporate debtor itself on 30.04.2019 in CA-729 (PB)/2019 where the same counsel for Resolution Professional has appeared. We wish to make it clear that all the Resolution Professionals shall make a note of these repeated orders passed by NCLT clarifying that claim of an applicant, like the present one, could not be rejected on the ground of delay as the provision has been held to be directory."*

Unfortunately, the effect of holding a provision as 'directory' has been to treat as if the provision does not exist in the statute. This is the case even with the Directive Principles shrouded in our constitution. If only the amendment to the Regulation was accompanied by a Note from the Board, on the rationale behind the change, the Tribunal may not have directed in the way they did. The other option to give effect to amended [Regulation 12\(2\)](#) was to appeal against such Orders right upto the Apex Court, but Committee of Creditors approving a

budget for this purpose is highly unlikely. Consequently, this important question of law has not reached the Apex Court for a direct reference.

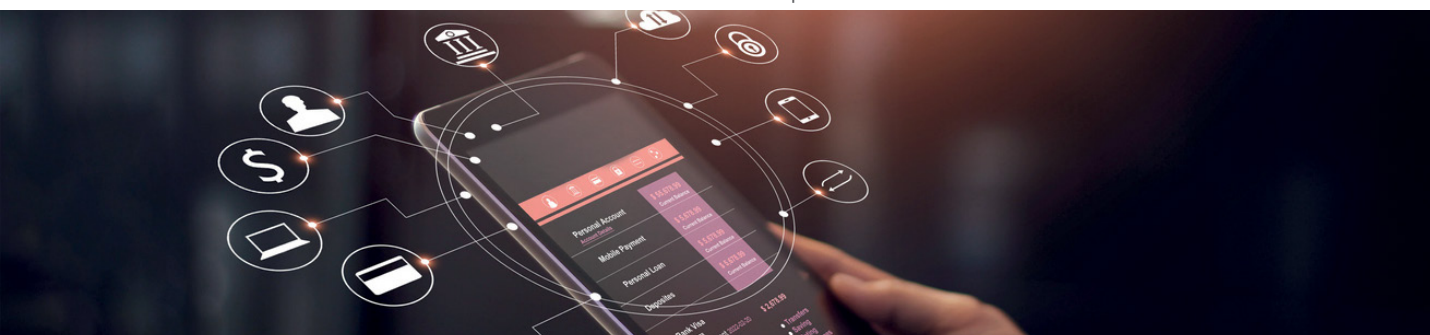
Fortunately, we do have the Hon'ble Supreme Court's view and judgment that has a direct bearing on this point of law.

In the matter of Jaypee Infratech Limited, the resolution plan presented by the resolution applicant stipulated that no payment other than the claims of FD Holders forming part of the Admitted Financial Debt, shall be made to any other FD Holder. This was not changed by the CoC even though the authorised representative of the fixed deposit holders made the submissions for honouring the claims received until the date of approval of the resolution plan. The Hon'ble NCLT, while approving the

Supreme Court.

The Apex Court in para 135 of its Judgment dated 24th March, 2021 in [\(Jaypee Kensington Boulevard Apartments Welfare Association v. Nbcc \(India\) Ltd. \(2021\) 125 taxmann.com 360\)](#) captures the related provisions contained in [Section 13](#), [Section 15](#), [Section 18](#), [Regulation 12](#) and [Regulation 13](#) and provides the crux of the issue in Para 135.1 of its Judgment. Extract of the relevant parts of the Judgment is reproduced hereunder, with emphasis added.

"135. In the scheme of the process for corporate insolvency resolution, it is preliminarily provided in Section 13 of the Code that, after admission of an application for corporate insolvency resolution process, the Adjudicating



resolution plan, modified the said term of the resolution plan as approved by CoC and provided in para 125 of its Order that the resolution applicant shall make provision to clear even the dues of unclaimed fixed deposit holders when they would make a claim and such a right will remain in force as long as they were entitled to make a claim under the Companies Act, 2013. This modification of the terms of resolution plan was challenged by the Resolution Applicant and lied before the Hon'ble

Authority, apart from declaring moratorium and appointing an interim resolution professional, is also required to cause a public announcement of the initiation of CIRP and 'call for submission of claims under Section 15'. As per Section 15, the material information in the public announcement is to contain, *inter alia*, 'the last date for submission of claims, as may be specified'. The IRP is enjoined with several duties under Section 18 and as per clause (b) thereof, he is to 'receive and

collate all the claims submitted by the creditors to him, pursuant to the public announcement made under sections 13 and 15'. CIRP Regulations make the position clearer still, where, by virtue of Regulation 12, a creditor is required to submit his claim with proof 'on or before the last date mentioned in the public announcement'; and a creditor who fails to submit the claim within the stipulated time, may yet submit the claim with proof 'on or before the ninetieth day of the insolvency commencement date'. As per Regulation 13, the resolution professional concerned is to verify the claims within seven days of the last date of receipt of claims.

135.1. Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicant as also of the Committee of Creditors. In the very scheme of the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor

who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12." ....

"135.2. It has not been the case of anyone that in the process in question, any of the requirements of Sections 13, 15 and 18 had not been complied with. It has also not been anybody's case that any claim made by any fixed deposit holder within the stipulated time was not taken into account by IRP.

**SC: Due adherence to the timelines is fundamental**

136. In the given fact situation and in view of the law declared by this Court, we find no justification for the directions contained in paragraph 125 of the order passed by NCLT. **Those directions are required to be annulled."**

This part of the Judgment is mandating due adherence to the timelines provided in the Code and the related Regulations, which is filing of claim within the stipulated time and the extended time as permitted by [Regulation 12](#), (which is 90 days from the commencement of the CIRP) and if not so made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by the RP. Effectively, fellow IPs should not entertain claims submitted by creditors after the 90 days' timeline provided in [Regulation 12\(2\)](#).

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# Pre-Packaged Insolvency Resolution Process for the MSMEs

## Background



**HEMANT SHARMA**

*Advocate (Insolvency Professional, RRR Insolvency Service Experts.)*



**TANYA ANAND**

*Advocate (Legal Associate, RRR Insolvency Service Experts.)*

The outbreak of COVID-19 pandemic has impacted businesses, financial markets and economies all over the world, including India, and has impacted the business operations of micro, small and medium enterprises - *MSME sector* and has exposed many of them to financial distress. The Government has taken several measures to mitigate the distress caused by the pandemic including increasing the minimum amount of default for initiation of corporate insolvency resolution process to one crore rupees and suspending filing of applications for initiation of corporate insolvency resolution process in respect of the defaults arising during the period of one year beginning from 25th March 2020. Such suspension for filing of applications for initiation of corporate insolvency resolution process has ended on 24th March 2021.

Micro, small and medium enterprises are critical for India's economy as they contribute significantly to its gross domestic product and provide employment to a sizeable population. The classification of MSME was revised with effect from 01.07.2020 which helped the MSME sector vastly. India currently has about 6-7 lakh companies that are classified as MSMEs and potentially these many could benefit from the newly introduced pre-packaged insolvency framework. It was expedient to provide an efficient alternative of insolvency resolution process for entities classified as micro, small and medium enterprises ensuring quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses and which preserves jobs & in order to achieve these objectives.

Keeping the above objectives in mind, the Government of India by way of an ordinance on April 4 2021 amended the Insolvency and Bankruptcy Code, 2016 (Code) and has introduced the concept of Pre-Packaged Insolvency Resolution Process (**PPIRP**)



and the mode and manner to initiate the same. At present the concept PPIP introduced will only be applicable in case of Micro, Small and Medium Enterprises (**MSME**) and the ordinance lays down all its objectives as stated above.

Close on the heels of the Ordinance, the Insolvency and Bankruptcy Board of India (**IBBI**) and the Central Government issued the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 (Prepack Regulations) setting down the manner of conducting various actions required to be contemplated by different stakeholders involved in a Prepack along with the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Rules, 2021 ("**Prepack Rules**").

### What is Pre-packaged Insolvency Resolution Process?

The term 'pre-pack' is not defined under the IBC but is recognized in various jurisdictions including the US and UK. Pre-packaged insolvency or pre-pack, as known globally, is a form of restructuring that allow creditors and debtors to work out an informal plan and then submit it for approval. A pre-pack is an informal arrangement for the resolution of the debt of a distressed company through an agreement between secured creditors and investors that relaxes the whole process of corporate liquidation and insolvency, thereby relieving the corporate debtor of the stress attached. This system of insolvency resolution has become an increasingly popular mechanism in the UK and Europe over the past decade and has immense potential for India, given that its boasts of benefits such as being cost effective and quicker.

In the Indian context, the new PPIRP regime is referred to as 'pre-packaged' because before a defaulting MSME can formally initiate the PPIRP process, it has to approach its creditors with a base resolution plan for its revival/restructuring and obtain creditors' approval to initiate PPIRP.

The directors and partners of the bankrupt entity are required to cooperate with the insolvency professional as may be required by him to perform his duties and exercise his powers. The promoters of such entity, or at least three-fourths of the total number of partners, should have passed a special resolution approving the filing of an application for initiating pre-packaged insolvency resolution process. The pre-packaged insolvency resolution process would be completed within 120 days from the pre-packaged insolvency commencement date, out of which 90 days' time has been given to the resolution professional to file the resolution plan with the adjudicating authority and 30 days' time has been given to the adjudicating authority to approve the resolution plan. If no resolution plan is approved by the committee of creditors, then the resolution professional shall apply to the adjudicating authority to terminate the PPIRP.

### Leading the way with MSMEs

Currently, the PPIRP route in India and the benefits thereto have been made available only to MSMEs, thus an application for initiating pre-packaged insolvency resolution process may be made only in respect of a corporate debtor classified as a MSME. Soon after the Ordinance was notified, the Government has also

now notified ₹10 lakh as the minimum amount of default for which PPIRP can be initiated for corporate MSMEs. There is no upper limit prescribed for the default amount but of course the criteria being

MSME should be satisfied to opt for PIRP process. The criterion of MSME as mentioned under [Section 7\(1\)](#) of the Micro, Small and Medium Enterprises Development Act, 2006 and the applicability of PPIRP is given below:

Class of MSME	Cap in Investment in Plant and Machinery or Equipment (Crore)	Cap in Turnover (Crore)	PPIRP Applicability
Micro Enterprise	1 crore	5 crores	Yes
Small Enterprise	10 crores	50 crores	Yes
Medium Enterprise	50 crores	250 crores	Yes

However, the applicability of PPIRP on MSMEs is subject to the following conditions:

- i. It should have failed to pay a due and payable debt of INR 1 million or more.
- ii. It should not have undergone a PPIRP or corporate insolvency resolution process (the regular insolvency process under IBC) (CIRP) during the past 3 years.
- iii. No liquidation orders should have been passed against it.
- iv. It should not be a person who is disqualified under [Section 29A](#) of the IBC.

### Highlights of the Ordinance

The sub-committee of the Insolvency Law Committee (Sub-Committee), in its report to the Ministry of Corporate Affairs, Central Government dated 31 October 2020 (Report) had recommended that the Indian prepack framework should be one which combines 'best of both worlds', by combining elements such as speed, efficiency and flexibility of an informal

process with the binding effects and structure of a formal process. In consonance with this objective, the Prepack Framework envisages the completion of certain actions prior to formally filing an application (Application) for commencement of the pre-packaged insolvency resolution process ("PP-IRP"), thereby keeping most of the time taking actions outside the rigors of a formal process. Thus, Vide the Ordinance dated 04.04.2021 in Chapter III of the Principal IBC Act, a separate chapter- Chapter IIIA is inserted ([Section 54A](#) to [section 54P](#)) in the IBC to deal with the pre-packaged insolvency resolution process.

**Section 54A(2)** of the Ordinance lays down the conditions which have to be fulfilled for a corporate debtor to file an application to initiate the pre-packaged insolvency process. These conditions are:

- (a) it has not undergone pre-packaged insolvency resolution process or completed corporate insolvency resolution process, as the case may be, during the period of three years preceding the initiation date;

- (b) it is not undergoing a corporate insolvency resolution process;
- (c) no order requiring it to be liquidated is passed under [section 33](#);
- (d) it is eligible to submit a resolution plan under [section 29A](#);
- (e) the financial creditors of the corporate debtor, not being its related parties, representing such number and such manner as may be specified, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the pre-packaged insolvency resolution process of the corporate debtor,
- (f) the financial creditors of the corporate debtor, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, have approved such proposal in such form as may be specified;
- (g) the majority of the directors or partners of the corporate debtor, as the case may be, have made a declaration, in such form as may be specified,
- (h) the members of the corporate debtor have passed a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the corporate debtor have passed a resolution, approving the filing of an application for initiating pre-packaged insolvency resolution process.

Once the corporate debtor fulfils the conditions specified in [Section 54A](#), it may file an application with the NCLT for initiating the pre-packaged insolvency resolution process along with the specified documentation. The Adjudicating Authority shall within 14 days of receipt of the application either admit the application or reject the application.

### **Moratorium and Public Announcement**

On the commencement date of the PPIRP, the adjudicating authority will be required to declare a moratorium prohibiting the actions restricted under [Section 14\(1\)](#) and [14\(3\)](#) of the IBC. and appoint the proposed resolution professional. It is relevant to note that the Prepack Framework excludes the applicability of [Section 14\(2\)](#) of the IBC which stipulates that even during moratorium, the supply of essential goods or services to the corporate debtor shall not be terminated or suspended or interrupted. Additionally, the Adjudicating Authority shall cause a public announcement of the initiation of the Prepack by the resolution professional, within 2 (two) days of his/her appointment (Public Announcement).

### **Formation of Committee of Creditors and preparation of Information Memorandum**

Contrary to a CIRP, the corporate debtor, in a Prepack, is required to prepare a preliminary list of claims, along with the details of the respective creditors, their security interest and guarantees, if any, and submit it to the RP within a period of 2 (two) days from ICD. Based on the records of the corporate debtor and other

relevant material available on record, the RP shall confirm the details received and maintain a list of claims. The RP is also required to inform every creditor regarding its claims, as confirmed by him/her, and seek objections, if any. Subsequently, within a period of 7 (seven) days of the ICD, the RP is required to constitute the committee of creditors (CoC) basis the list of claims submitted by the corporate debtor.

Similarly, the corporate debtor is required to prepare a preliminary information memorandum containing information relevant for formulating a resolution plan and submit it to the RP within a period of 2 (two) days from ICD. The RP is required to finalise the information memorandum and submit to members of the CoC within 14 (fourteen) days of ICD after receiving an undertaking from the members of the CoC that such member shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person (as the case may be).

### Corporate Debtor in possession model

It is worthwhile to note that during the PPIRP, the existing management shall remain intact and the control/the management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partners of the corporate debtor,

subject to the prescribed conditions. Further, the Board of Directors or the partners,



need to protect and preserve the value of the property of the corporate debtor, and manage its operations as a going concern. The instant step comes a huge relief to the promoters of the Corporate Debtor as this will give lot of flexibility to existing promoters of MSMEs.

### Consideration and approval of Resolution Plan

The corporate debtor is required to submit the Base Resolution Plan to the RP within a period of 2 (two) days from Insolvency Commencement Date. The CoC may consider and approve the Base Resolution Plan if it does not impair the claims owed to the operational creditors i.e., if the Base Resolution Plan discharges the debts owed to operational creditors in full.

However, in the event:

- (a) the CoC is not satisfied with the Base Resolution Plan; or

(b) the Base Resolution Plan impairs any claims of operational creditors,

**then the RP is required to invite prospective resolution applicants (“PRAs”) no later than 21 days from the date of ICD to submit a resolution plan for the corporate debtor to compete with the Base Resolution Plan (Swiss Challenge Process).**

Forethought in Pre-Packaged Insolvency Resolution Process

In case the COC does not approved the restructuring plan then PIRP ends there

itself and the company shall stand at its original position as it was before the pre-pack initiation. Additionally there is no event of taking off the control of the company from the promoters/management of the company by the bankers/COC.

Considering the existing stressed financial position the Pre-Packaged Insolvency Process - PIRP shall prove as a boon if tried for considering the expedient initiative by the Government in the resolution of financially stressed conditions with little cost & bigger benefits with no additional risk or losses or fear of losing the company to bankers.

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(2021) 125 taxmann.com 151 (SC)

## SUPREME COURT OF INDIA

### Cognizance for Extension of Limitation, In re

S.A. BOBDE, CJI.

L. NAGESWARA RAO AND S. RAVINDRA BHAT, JJ.

SUO MOTU WRIT PETITION (CIVIL) NO. 3 OF 2020

MARCH 8, 2021

**Section 5** of the Limitation Act, 1963 - Extension of prescribed period in certain cases - Whether to obviate difficulties faced by litigants on account of COVID-19 in filing petitions/applications/suits/appeals/all other proceedings within period of limitation prescribed under general law of limitation or under any special laws, it is directed that in computing period of limitation for any suit/appeal/application or proceeding, period from 15-3-2020 to 14-3-2021 shall stand excluded - Held, yes - Whether further, in case where limitation was expired during above period, all persons shall have a limitation period of 90 days from 15.3.2021 and in event where actual balance period of limitation remaining, with effect from 15.3.2021, is

greater than 90 days, that longer period shall apply - Held, yes (Para 2)

### FACTS

Due to onset of COVID-19 pandemic, Supreme Court took *suo motu* cognizance of the situation arising from difficulties that would be faced by the litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State). Supreme Court ordered extension of period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15-3-2020 till further

orders. The order dated 15-3-2020 was extended from time-to-time.

### HELD

The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. In view of the changing scenario relating to the pandemic, the extension of limitation should come to an end. (Para 1)

Thus, it is appropriate to issue directions that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-3-2020 till 14-3-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2020, if any, shall become available with effect from 15-3-2021. (Para 2)

In cases where the limitation would have expired during the period between 15-3-2020 till 14-3-2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15-3-2021. In the event the actual balance period of limitation remaining, with effect from 15-3-2021, is greater than 90 days, that longer period shall apply. (Para 2)

The period from 15-3-2020 till 14-3-2021 shall also stand excluded in computing the periods prescribed under [sections 23\(4\)](#) and [29A](#) of the Arbitration and Conciliation Act, 1996, [section 12A](#) of the Commercial Courts Act, 2015 and provisos (b) and (c) of [section 138](#) of the Negotiable Instruments Act,

1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings. (Para 4)

**K.K. Venugopal**, AG, **Tushar Mehta**, SG, **Kanu Agrawal**, **Ankur Talwar**, Advs., **B.V. Balram Das**, AOR, **Arvind Kumar Sharma**, AOR, **A. Lakshminarayanan**, AOR, **Ranjan Mukherjee**, AOR, **Sidharth Luthra** Sr. Adv., **Varun K Chopra**, **Arshdeep Singh Khurana**, **Akshat Gupta**, **Gurtejpal Singh**, **Rajshree Sharma**, Advs., **Apoorv Kurup**, AOR, **Ms. Nidhi Mittal**, Adv., **B. Krishana Prasad**, AOR, **Ms. Suchita Dixit**, Adv., **Anilendra Pandey**, AOR, **Madhusudan**, Adv., **Sandeep**, Adv., **Ashwani Kumar**, Adv., **Abhimanyu Tewari**, AOR, **Ms. Riddhi Sancheti**, AOR, **Ramesh Babu M.R.**, AOR, **Saurabh Mishra**, AAG, **Arjun Garg**, AOR, **Ms. Shrutika Garg**, Adv., **Ms. Garima Prashad**, AOR, **Ms. Archana Sahadeva**, AOR, **Ms. Binu Tamta**, AOR, **Krishnanand Pandeya**, AOR, **V.N. Raghupathy**, AOR, **P.H. Parekh**, Sr. Adv., **Sameer Parekh**, Adv., **Kshatrashal Raj**, Adv., **Ms. Tanya Chaudhry**, Adv., **Ms. Pratyusha Priyadarshini**, Adv., **Ms. Nitika Pandey**, Adv., **Ms. Soumya Chakraborty**, Sr. Adv., **Sanjai Kumar Pathak**, AOR, **Arvind Kumar Tripathi**, Adv., **Ms. Shashi Pathak**, Adv., **S. Thananajayan**, AOR, **Mayank Kshirsagar**, AOR, **Apoorv Shukla**, AOR, **Aruna Mathur**, AOR, **Avneesh Arputham**, Adv., **Divyakant Lahoti**, AOR, **Ms. Parikshit Ahuja**, **Ms. Praveena Bisht**, **Ms. Vindhya Mehra**, **Madhur Jhavar**, **Kartik Lahoti**, **Rahul Maheshwari**, **Ms. Shivangi Malhotra**, **Jaigopal Saboo**, Advs., **Mukul Kumar**, AOR, **B.V. Balaram Das**, AOR, **Ms. Anannya Ghosh**, AOR, **Ms. Aniruddha P.**

**Mayee, AOR, Vivek Narayan Sharma, AOR, Pranaya Goyal, AOR, Nikhil Ranjan, Utkarsh Kulvi, Pranav Saigal, Adv., Ms. Radhika Gautam and Sarvam Ritam Khare, AORs for the Appearing Parties.**

## ORDER

1. Due to the onset of COVID-19 pandemic, this Court took *suo motu* cognizance of the situation arising from difficulties that might be faced by the litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State). By an order dated 27-3-2020 this Court extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15-3-2020 till further orders. The order dated 15-3-2020 was extended from time to time. Though, we have not seen the end of the pandemic, there is considerable improvement. The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. We are of the opinion that the order dated 15-3-2020 has served its purpose and in view of the changing scenario relating to the pandemic, the extension of limitation should come to an end.

2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions:-

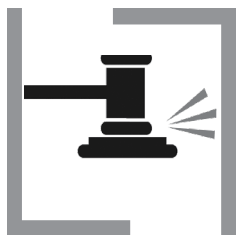
1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from

15-3-2020 till 14-3-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2020, if any, shall become available with effect from 15-3-2021.

2. In cases where the limitation would have expired during the period between 15-3-2020 till 14-3-2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15-3-2021. In the event the actual balance period of limitation remaining, with effect from 15-3-2021, is greater than 90 days, that longer period shall apply.
3. The period from 15-3-2020 till 14-3-2021 shall also stand excluded in computing the periods prescribed under sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.
4. The Government of India shall amend the guidelines for containment zones, to state.  
  
"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary

functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.”

3. The Suo Motu Writ Petition is disposed of accordingly.



(2021) 125 taxmann.com 244 (SC)

## SUPREME COURT OF INDIA

**Arun Kumar Jagatramka v. Jindal Steel and Power Ltd.**

DR. DHANANJAYA Y. CHANDRACHUD AND M. R. SHAH, JJ.

CIVIL APPEAL NOS. 9664 OF 2019 & 2719 OF 2020

AND WRIT PETITION (C) NO. 269 OF 2020†

MARCH 15, 2021

**Section 29A of the Insolvency and Bankruptcy Code, 2016, and section 230 of the Companies Act, 2013 - Corporate insolvency resolution process - Resolution applicant - Persons not eligible to be - Whether a person, who is ineligible under section 29A, would not be permitted to propose a compromise or arrangement under section 230 of Companies Act, 2013 - Held, yes (Paras 84 and 91)**

### FACTS

- ◆ GNCL, the corporate debtor, moved an application under [section 10](#) for initiating the Corporate Insolvency Resolution Process. The application was admitted.
- ◆ Appellant being a promoter of corporate debtor submitted a resolution plan. The plan was to be put to a vote in a meeting of the Committee of Creditors.
- ◆ The code, was amended by the Insolvency and Bankruptcy Code

(Amendment) Act, 2018. [Section 29A](#) which was inserted with retrospective effect from 23-11-2017 provides a list of persons who were ineligible to be resolution applicants. Sub-section (g) of [section 29A](#) disqualifies a person from being a resolution applicant if they have been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction had taken place and in respect of which an order had been made by the NCLT under the IBC.

- ◆ Due to the insertion of [section 29A](#), appellant became ineligible to submit a resolution plan. No further resolution plan was approved by the CoC due to the paucity of time. In the absence of a resolution plan, the NCLT passed an order of liquidation. The order of the NCLT

ordering liquidation was challenged by appellant.

- ◆ During the pendency of the appeal appellant moved an application under [sections 230 to 232](#) of the Companies Act, 2013 proposing a scheme for compromise and arrangement between the erstwhile promoters and creditors. Said application was allowed and a direction was issued for convening of a meeting of shareholders, secured creditors, unsecured creditors for approval of the scheme of compromise and arrangement.
- ◆ The Liquidation Process Regulations were amended by the IBBI, which inserted [regulation 2B](#). [Regulation 2B](#) was amended by which a proviso was added to sub-section (1) of [regulation 2B](#), which provides that a party ineligible to propose a resolution plan under the IBC could not be a party to a compromise or arrangement.
- ◆ The NCLAT held that promoters who were ineligible to propose a resolution plan under [section 29A](#) were not entitled to file an application for compromise and arrangement under [sections 230 to 232](#) of the Act of 2013.
- ◆ Writ Petition has been filed by appellant, assailing the notifications issued by the IBBI, through which it inserted [Regulation 2B](#) into the Liquidation Process Regulations, and subsequently amended it. He contends that [Regulation 2B](#) is ultra vires and also violates [Articles 14, 19 and 21](#) of the Constitution.

## HELD

- ◆ The intent behind introducing [section 29A](#) was to prevent unscrupulous persons from gaining control over the affairs of the company. These persons included those who by their misconduct have contributed to the defaults of the company or are otherwise undesirable. (Para 45)
- ◆ The proviso to [section 35\(1\)\(f\)](#) incorporates the same norm in the liquidation process, when it stipulates that the liquidator shall not sell the immovable and movable or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant. These words in [section 35\(1\)\(f\)](#) are clearly referable to the ineligibility which is set up in [section 29A](#). (Para 46)
- ◆ The statutory scheme underlying the Code and the legislative history of its linkage with [section 230](#) of the Act of 2013, in the context of a company which is in liquidation, has important consequences for the outcome of the controversy in the present case. The first point is that a liquidation under IBC follows upon the entire gamut of proceedings contemplated under that statute. The second point to be noted is that one of the modes of revival in the course of the liquidation process is envisaged in the enabling provisions of [section 230](#) of the Act of 2013, to which recourse can be taken by the liquidator appointed



under [section 34](#). The third point is that the statutorily contemplated activities of the liquidator do not cease while inviting a scheme of compromise or arrangement under [section 230](#). The appointment of the liquidator is provided in [section 34](#) and their duties are specified in [section 35](#).

- ◆ In taking recourse to the provisions of section 230 of the Act of 2013, the liquidator appointed under the Code is, above all, to attempt a revival of the corporate debtor so as to save it from the prospect of a corporate death. The consequence of the approval of the scheme of revival or compromise, and its sanction thereafter by the Tribunal under sub-section (6), is that the scheme attains a binding character upon stakeholders including the liquidator who has been appointed under the IBC. Undoubtedly, [section 230](#) of the Act of 2013 is wider in its ambit in the sense that it is not confined only to a company-in-liquidation or to corporate debtor which is being wound up. Obviously, therefore, the rigors of the IBC will not apply to proceedings under [section 230](#) of the Act of 2013 where the scheme of compromise or arrangement proposed is in relation to an entity which is not the subject of a proceeding under the Code.
- ◆ But, when, as in the present case, the process of invoking the provisions of [section 230](#) of the Act of 2013 traces its origin or, as it

may be described, the trigger to the liquidation proceedings which have been initiated under the IBC, it becomes necessary to read both sets of provisions in harmony. A harmonious construction between the two statutes would ensure that while on the one hand a scheme of compromise or arrangement under [section 230](#) is being pursued, this takes place in a manner which is consistent with the underlying principles of the IBC because the scheme is proposed in respect of an entity which is undergoing liquidation. As such, the company has to be protected from its management and a corporate death. It would lead to a manifest absurdity if the very persons who are ineligible for submitting a resolution plan, participating in the sale of assets of the company-in-liquidation or participating in the sale of the corporate debtor as a 'going concern', are somehow permitted to propose a compromise or arrangement under [section 230](#) of the Act of 2013. (Para 68)

- ◆ The stages of submitting a resolution plan, selling assets of a company-in-liquidation and selling the company as a going concern during liquidation, all indicate that the promoter or those in the management of the company must not be allowed a back-door entry in the company and are hence, ineligible to participate during these stages. Proposing a scheme of compromise or arrangement under

- [section 230](#) of the Act of 2013, while the company is undergoing liquidation under the provisions of the IBC lies in a similar continuum. Thus, the prohibitions that apply in the former situations must naturally also attach to the latter to ensure that like situations are treated equally. (Para 70)
- ◆ Additionally, there is no merit in the submission that [section 35\(1\)\(f\)](#) applies only to a liquidator who conducts a sale of the property of the corporate debtor in liquidation but not to the NLCT, acting as the Tribunal, when it exercises its powers under [section 230](#) of the Act of 2013. The liquidator is entrusted with several powers and duties. [Sections 37 to 42](#) are illustrative of the powers of the liquidator in the course of the liquidation. The liquidator exercises several functions which are of a quasi-judicial in nature and character. [Section 35\(1\)](#) itself enunciates that the powers and duties which are entrusted to the liquidator are 'subject to the directions of the adjudicating authority'. The liquidator, in other words, exercises functions which have been made amenable to the jurisdiction of the NCLT, acting as the Adjudicating Authority. To hold therefore that the ineligibility prescribed under the provisions of [section 35\(1\)\(f\)](#) can be disregarded by the Tribunal for the purpose of considering an application for a scheme of compromise or arrangement under [section 230](#) of the Act of 2013, in respect of a company which is under liquidation under the IBC, would not be a correct construction of the provisions of law. (Para 76)
  - ◆ The principal ground of challenge to [Regulation 2B](#) is that the regulation transgressed the authority of IBBI by introducing a disqualification or ineligibility in regard to the presentation of an application for a scheme of compromise or arrangement under [section 230](#) of the Act of 2013. It has been urged that IBBI, as an entity constituted by the IBC, had no statutory jurisdiction to amend the provisions of [section 230](#) of the Act of 2013 or to impose a restriction which operates under the purview of [section 230](#). The position can be considered from two perspectives, independent of the provisions of [Regulation 2B](#). Even in the absence of the [Regulation 2B](#), a person ineligible under [section 29A](#) read with [section 35\(1\)\(f\)](#) is not permitted to propose a scheme for revival under [section 230](#), in the case of a company which is undergoing a liquidation, as noted for the reasons indicated earlier, that in the case of a company which is undergoing liquidation a scheme of compromise or arrangement proposed under [section 230](#) is a facet of the liquidation process. The object of the scheme of compromise or arrangement is to revive the company.
  - ◆ The prohibition placed by the Parliament in [section 29A](#) and

section 35(1)(f) must also attach itself to a scheme of compromise or arrangement under section 230 of the Act of 2013, when the company is undergoing liquidation under the auspices of the IBC. As such, Regulation 2B of the Liquidation Process Regulations, specifically the proviso to Regulation 2B(1), is also constitutionally valid. For the above reasons, there is no merit in the appeals. (Para 91)

### CASE REVIEW

*Jindal steel and Power Ltd. v. Arun Kumar Jagatramka* (2020) 114 taxmann.com 133 (NCL-AT) (para 91) *Affirmed*.

### CASES REFERRED TO

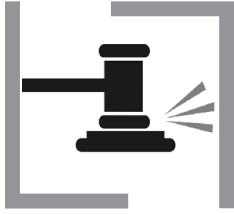
*Jindal Steel and Power Ltd. v. Arun Kumar Jagatramka* (Company Appeal (AT) No. 221 of 2018, dated 24-10-2019) (para 1), *Gujarat NRE Coke Ltd. Inre* (C.A. (CAA) No. 198/KB/2018, dated 15-5-2018) (para 1), *Arun Kumar Jagatramka v. Gujarat NRE Coke Ltd.* (Company Appeal (AT) (Ins.) No. 55-56 of 2018, dated 5-4-2018) (para 6), *State Bank of India v. Sukam Power System Ltd.* (CP (IB) No. 540 (PB)/2017, dated 5-9-2016) (para 11), *Lal Mohammad v. Su Kam Power System Ltd.* (Company Appeal (AT) (Ins.) No. 451 of 2019, dated 29-4-2019) (para 14), *Swiss Ribbons (P.) Ltd. v. Union of India* (2019) 101 taxmann.com 389/152 SCL 365 (SC) (para 29), *Brilliant*

*Alloys (P.) Ltd. v. S Rajagopal* (2018) SCC Online SC 3154 (para 29), *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2019) 111 taxmann.com 234 (SC) (para 29), *Meghal Homes (P.) Ltd. v. Shree Niwas Girni K.K. Samiti* (2007) 78 SCL 482 (SC) (para 31), *Chitra Sharma v. Union of India* (2018) 96 taxmann.com 216/148 SCL 833 (SC) (para 47), *Arcelormittal India (P.) Ltd. v. Satish Kumar Gupta* (2018) 98 taxmann.com 99/150 SCL 354 (SC) (para 49), *Phoenix ARC (P.) Ltd. v. Spade Financial Service* (2021) 124 taxmann.com 24 (SC) (para 52), *Ramesh Kymal v. Siemens Gamesa Renewable Power (P.) Ltd.* (2021) 124 taxmann.com 226 (SC) (para 52), *Anuj Jain v. Axis Bank Ltd.* (2020) 114 taxmann.com 656 (SC) (para 52), *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* (1996) 10 SCL 70 (SC) (para 63) and *Y. Shivram Prasad v. S. Dhanapal* (2019) 104 taxmann.com 377/153 SCL 294 (NCL-AT) (para 67).

**Sandeep Bajaj**, Adv., **Soayib Qureshi**, Adv., **Ms. Nidhi Mohan Parashar**, AOR, **Ms. Aditi Pundhir**, Adv., **Ms. Sangya Gupta**, Adv. and **Ms. Richa Kapoor**, AOR for the Appellant. **Arvind Kumar Sharma**, AOR, **T.V.S. Raghavendra Sreyas**, AOR, **Sidhartha Sharma**, Adv., **Arjun Asthana**, Adv., **Sumit Binani**, Liquidator-in-person, **Arun Banerjee**, AOR, **Amit Sibal**, Sr. Adv., **Misha**, Adv., **Anoop Rawat**, Adv., **Siddhant Kant**, Adv., **Sagar Dhawan**, Adv., **Nikhil Mathur**, Adv., **Puja Kumari**, Adv., **S.S. Shroff**, AOR and **Vikas Mehta**, AOR for the Respondent.

For Full Text of the Judgment see

(2021) 125 taxmann.com 244 (SC)



(2021) 125 taxmann.com 150 (SC)

## SUPREME COURT OF INDIA

**Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta**

DR. DHANANJAYA Y. CHANDRACHUD AND M.R. SHAH, JJ.

CIVIL APPEAL NO. 9241 OF 2019

MARCH 8, 2021

**Section 60 of the Insolvency and Bankruptcy Code, 2016 - Corporate person's Adjudicating Authorities - Adjudicating Authority - Whether where appellant, a government of Gujarat undertaking, sought to terminate Power Purchase Agreement (PPA) with corporate debtor only on account of CIRP being initiated against corporate debtor, NCLT/NCLAT could have exercised jurisdiction under section 60(5)(c) to stay termination of PPA by appellant, since allowing it to terminate PPA would certainly result in corporate death of corporate debtor due to PPA being its sole contract - Held, yes (Paras 164 & 165)**

### FACTS

- ◆ The appellant, a Government of Gujarat undertaking, is a successor to the Gujarat Electricity Board, and is also the holding company of all the State Power Utilities in Gujarat.
- ◆ The appellant and the corporate debtor entered into a Power Purchase Agreement (PPA) on in accordance with which the appellant has to purchase all the power generated by the corporate debtor.
- ◆ The NCLT admitted a petition filed by the corporate debtor under section 10, commenced the Corporate Insolvency Resolution Process in respect of the corporate debtor, issued an order of moratorium and the first respondent was appointed as the Interim Resolution Professional.
- ◆ Thereafter, the appellant issued notice to the corporate debtor for termination of Power Purchase Agreement.
- ◆ The Resolution Professional of the corporate debtor filed applications under section 60(5) before the NCLT in regard to the Notices issued by the appellant to the corporate debtor, and sought an injunction restraining the appellant from terminating the PPA.
- ◆ The National Company Law Tribunal as well as the National Company Law Appellate Tribunal stayed the termination by the appellant of its Power Purchase Agreement with corporate debtor.
- ◆ On appeal, the appellant submitted that the NCLT/NCLAT cannot exercise jurisdiction under the IBC

over disputes arising from contracts such as the PPA.

## HELD

### *Jurisdiction of the NCLT/NCLAT over contractual disputes*

- ◆ In the instant case, the PPA was terminated solely on the ground of insolvency, since the event of default contemplated under article 9.2.1(e) of PPA was the commencement of insolvency proceedings against the corporate debtor. In the absence of the insolvency of the corporate debtor, there would be no ground to terminate the PPA. The termination is not on a ground independent of the insolvency. The present dispute solely arises out of and relates to the insolvency of the corporate debtor. (Para 69)
- ◆ The RP can approach the NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes that arise de hors the insolvency of the corporate debtor, the RP must approach the relevant competent authority. For instance, if the dispute in the present matter related to the non-supply of electricity, the RP would not have been entitled to invoke the jurisdiction of the NCLT under the IBC. However, since the dispute in the present case has arisen solely on the ground of the insolvency of the corporate debtor, NCLT is empowered to adjudicate this

dispute under [section 60\(5\)\(c\)](#) of the IBC. (Para 72)

### Jurisdiction of NCLT and GERC

- ◆ Attention has also been drawn to [section 86\(1\)\(f\)](#) of the Electricity Act, which provides that GERC shall discharge the function of adjudicating 'the disputes between the licensees, and generating companies and to refer any dispute for arbitration'. It has been submitted that, therefore, any issue in relation to the PPA must be raised before the GERC and not the NCLT. (Para 74)
- ◆ It has been urged on behalf of the appellant that [section 238](#) does not apply to a bilateral commercial contract between a corporate debtor and a third party and only applies to statutory contracts or instruments entered into by operation of law. The basis of this submission is that the word 'instrument' should be given a meaning ejusdem generis to the provision 'contained in any other law'. There is no force in this argument. [Section 238](#) does not state that the 'instrument' must be entered into by operation of law; rather it states that the instrument has effect by virtue of any such law. In other words, the instrument need not be a creation of a statute; it becomes enforceable by virtue of a law.
- ◆ [Section 238](#) is prefaced by a non-obstante clause. NCLT's jurisdiction could be invoked in the instant case



because the termination of the PPA was sought solely on the ground that the corporate debtor had become subject to an insolvency resolution process under the IBC. (Para 78)

- ◆ [Section 63](#) provides that 'no civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code'. (Para 79)

Residuary jurisdiction of the NCLT under [section 60\(5\)\(c\)](#)

- ◆ The residuary jurisdiction of the NCLT under [section 60\(5\)\(c\)](#) provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of the NCLT were to be confined to actions prohibited by [section 14](#) of the IBC, there would have been no requirement for the legislature to enact [section 60\(5\)\(c\)](#). [Section 60\(5\)\(c\)](#) would be rendered otiose if [section 14](#) is held to be the exhaustive of the grounds of judicial intervention contemplated under the IBC in matters of preserving the value of the corporate debtor and its status as a 'going concern'. This finding on the validity of the exercise of residuary power by the NCLT is premised on the facts of this case. However, it is pertinent to mention

that the NCLT cannot exercise its jurisdiction over matters de hors the insolvency proceedings since such matters would fall outside the realm of IBC. (Para 87)

Appellant's right to terminate the PPA in the present case

- ◆ Article 9.1 of the PPA clarifies that the PPA shall become effective upon the execution and delivery thereof by the parties and shall remain in operation for a period of 25 years. Article 9.2.1 enumerates the Events of Default by the corporate debtor, within which article 9.2.1(e) states that the corporate debtor becoming voluntarily or involuntarily, the subject of a proceeding in any bankruptcy or insolvency laws, constitutes an Event of Default. The exception to this clause is triggered where dissolution of the corporate debtor is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under PPA and creditworthiness. (Para 148)
- ◆ In accordance with article 9.3.1, the appellant, on the occurrence of an event of default under article 9.2.1, can issue a default Notice which shall specify in reasonable detail the event of default giving rise to the default notice, and call upon the corporate debtor to remedy it. At the expiry of 30 days from such notice, unless otherwise agreed, if the default has not

been remedied, the appellant can terminate the PPA. Further, the corporate debtor shall have the liability to make payments towards compensation to the appellant which is equivalent to three years' billing based on the first-year tariff considered on normative PLF while determining the tariff by GERC, within 30 days from the termination notice. In accordance with article 10.4, when differences or disputes between the parties are not settled through mutual negotiation within 60 days of the dispute arising, it shall be adjudicated by the State Commission, in accordance with Law. (Para 149)

- ◆ In accordance with article 12.9, assignment of the corporate debtor's rights under the PPA is permissible, with the prior written consent of the other party. The proviso to this article makes it clear that any assignee shall expressly assume the corporate debtor's obligations thereafter arising under the PPA, on the furnishing of satisfactory documentation. (Para 150)

#### Validity of the termination of PPA

- ◆ [Section 14](#) of the IBC lists the conditions under which a moratorium can be imposed by the NCLT in terms of sub-sections (a) to (d). It further clarifies that a license, permit, quota, concession, grant or right given by a government cannot be suspended or terminated on the grounds of insolvency,

subject to certain exceptions. This clarification was added by way of an Explanation to [section 14\(1\)](#) with effect from 28 December 2019. The Report of the Insolvency Law Committee dated 20-2-2020, noted that without such government grants 'the business of the corporate debtor would lose its value and it would not be possible to keep the corporate debtor running as a going concern during the CIRP period, or to resolve the corporate debtor as a going concern'. The Report further stated that the termination of such grants during CIRP on account of *ipso facto* clauses or non-payment of dues is in contravention of the purpose behind imposition of moratorium itself. (Para 157)

- ◆ While recommending the inclusion of an explanation, the Report of the Insolvency Law Committee stated that while it was of the view that termination or suspension of such grants is prevented by section 14, it recommended adding the Explanation' to avoid any scope for ambiguity and in exercise of abundant caution', and to ensure that the legislative intent should be made explicit by introduction of the explanation by way of an amendment to section 14(1). The Insolvency Law Committee (in its discussion in the February 2020 Report) took the position that section 14 even in its unamended form, contained an interdict on the invalidation of government grants,

though the language of [section 14](#) did not make this position explicit. (Para 158)

- ◆ [Section 14\(2\)](#) provides that supply of essential goods or services, as may be specified, cannot be terminated, suspended or interrupted during the moratorium. [Section 14\(2A\)](#) was added with effect from 28-12-2019. It provides that, where the IRP or RP considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage its operations as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified. The order of moratorium has effect till the culmination of insolvency resolution process. (Para 160)
- ◆ The inclusion of the *Explanation* to [section 14\(1\)](#) and [section 14\(2A\)](#) indicates that Parliament has been amending the IBC to ensure that the status of a corporate debtor as a 'going concern' is not hampered on account of varied situations, which may not have been in contemplation at the time of enacting the IBC. (Para 161)
- ◆ Further, the scheme of the IBC, *inter alia*, in terms of [sections 20\(2\)\(e\)](#), [25\(1\)](#) and definition of resolution plan shows that it aims to preserve

the corporate debtor as a 'going concern'. (Para 162)

- ◆ Although various provisions of the IBC indicate that the objective of the statute is to ensure that the corporate debtor remains a 'going concern', there must be a specific textual hook for the NCLT to exercise its jurisdiction. The NCLT cannot derive its powers from the 'spirit' or 'object' of the IBC. [Section 60\(5\)\(c\)](#) vests the NCLT with wide powers since it can entertain and dispose of any question of fact or law arising out or in relation to the insolvency resolution process. However, that the NCLT's residuary jurisdiction, though wide, is nonetheless defined by the text of the IBC. Specifically, the NCLT cannot do what the IBC consciously did not provide it the power to do. (Para 163)
- ◆ In instant case, the PPA has been terminated solely on the ground of insolvency, which gives the NCLT jurisdiction under [section 60\(5\)\(c\)](#) to adjudicate this matter and invalidate the termination of the PPA as it is the forum vested with the responsibility of ensuring the continuation of the insolvency resolution process, which requires preservation of the corporate debtor as a going concern. In view of the centrality of the PPA to the CIRP in the unique factual matrix of this case, an interpretation of the NCLT's residuary jurisdiction must be adopted which comports with the broader goals of the IBC. (Para 164)

- ◆ Given that the terms used in [section 60\(5\)\(c\)](#) are of wide import, as recognized in a consistent line of authority, it is held that the NCLT was empowered to restrain the appellant from terminating the PPA. Our decision is premised upon a recognition of the centrality of the PPA in the instant case to the success of the CIRP, in the factual matrix of this case, since it is the sole contract for the sale of electricity which was entered into by the corporate debtor. In doing so, the NCLT would have been empowered to set aside the termination of the PPA in this case because the termination took place solely on the ground of insolvency. The jurisdiction of the NCLT under [section 60\(5\)\(c\)](#) cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of the corporate debtor. Even more crucially, it cannot even be invoked in the event of a legitimate termination of a contract based on an *ipso facto* clause like article 9.2.1(e) herein, if such termination will not have the effect of making certain the death of the corporate debtor. As such, in all future cases, NCLT would have to be wary of setting aside valid contractual terminations which would merely dilute the value of the corporate debtor, and not push it to its corporate death by virtue of it being the corporate debtor's sole contract (as was the case in this matter's unique factual matrix). (Para 165)

## CASE REVIEW

Abhilash Lal (2020) 13 SCC 234 (para 76) distinguished

(*Gujarat urja Vikas Nigam Ltd. v. Amit Gupta* (2021) 125 taxmann.com 149 (NCL-AT) affirmed (**See Annex**))

## CASES REFERRED TO

*Embassy Property Development (P.) Ltd. v. State of Karnataka* (2019) 112 taxmann.com 56/(2020) 157 SCL 445 (SC) (para 33), *Swiss Ribbon (P.) Ltd. v. Union of India* (2019) 101 taxmann.com 389/152 SCL 365 (SC) (para 34), *Municipal Corp of Greater Mumbai (MCGM) v. Abhilash Lal* (2019) 111 taxmann.com 405/(2020) 157 SCL 477 (SC) (para 36), *Ashoka Marketing v. PNB* (1990) 4 SCC 406 (para 40), *Renusagar Power Co. Ltd. v. General Electric Co.* (1984) 4 SCC 679 (para 48), *Mansukhlal Dhanraj Jain v. Eknath Vithal Ogale* (1995) 2 SCC 665 (para 49), *Doypack System (P.) Ltd. v. Union of India* (1988) 2 SCC 299 (para 50), *Madras Petrochem Ltd. v. BIFR* (2016) 66 taxmann.com 17/134 SCL 193 (SC) (para 56), *Innoventive Industries Ltd. v. ICICI Bank* (2017) 84 taxmann.com 320/143 SCL 625 (SC) (para 56), *Arcelore Mittal (India) (P.) Ltd. v. Satish Kumar Gupta* (2018) 98 taxmann.com 99/150 SCL 354 (SC) (para 56), *Sudharshan Chits (I) Ltd. v. O. Sukumaran Pillar* (1984) 4 SCC 657 (para 58), *Thampanoor Ravi v. Charupara Ravi* (1999) 8 SCC 74 (para 60), *Dhirendra Chandra Pal v. Associated Bank of Tripura Ltd.* AIR 1955 SC 213 (para 62), *Union of India v. R. Gandhi, President Madras Bar Association* (2010) 11 SCC 1 (para 65), *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*

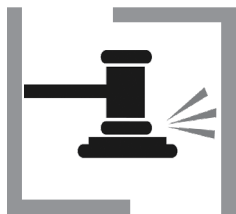
(2019) 111 taxmann.com 234 (SC) (para 80), *Remdeo Chauhan v. Bani Kant Das* (2010) 14 SCC 209 (para 81), *D.R. Kohli v. Atul Products Ltd.* (1985) 2 SCC 77 (para 82), *A. Deivendran v. State of T.N.* (1997) 11 SCC 720 (para 83), *Johri Lal Soni v. Bhanwari Bai* (1977) 4 SCC 59 (para 84), *Riggs National Bank of Washington, D.C. v. John Gills Perry*, 729 F.2D 982 (1984) (para 97), *W.R. Grace & Co., Inr* 475 B.R. 34 (2012) (para 97), *James Margaret Rose, In re Jr., Debtor* 21 B.R. 272 (1982) (para 97), *General Growth Properties, Inc., In re* 451 B.R. 323 (2011) (para 97), *Belmont Park Investments Pty Ltd. v. BNY Corporate Trust Services Ltd.* (2011) 3 W.L.R. 521 (para 99), *Fibria Celulose S/A v. Pan Ocean Co. Ltd.* (2014) BUS LR 1041 (para 103), *Chandos Construction Ltd. v. Deloitte Restructuring Inc.* 2020 SCC 25 (para 119), *Rai Sahib*

*Ram Jawaya Kapur v. State of Punjab* (1955) 2 SCR 225 (para 136), *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225 (para 137), *Northern Securities Co. v. United State* 1904 SCC Online U.S. SC 63 (para 142), *P. Mohanraj v. Shah Bros Ispat (P.) Ltd.* (2021) 125 taxmann.com 39 (SC) (para 161) and *S. Sukumar v. Secretary, Institute of Chartered Accounts of India* (2018) 90 taxmann.com 380/254 Taxman 37 (SC) (para 168).

**Ms. Hemantika Mahi**, AOR for the Appellant. **C.V. Singh**, Sr. Adv., **Nakul Dewan**, Sr Adv., **Ms. Pooja Mahajan**, Adv., **Ms. Mahima Singh**, Adv., **S. Mahajan**, Adv., **Ms. Neelu Mohan**, Adv., **Rohan Andrew Naik**, Adv., **Ms. Ila Sheel**, Adv., **Ritesh Kumar**, AOR and **Ashish Kumar**, AOR for the Respondent.

For Full Text of the Judgment see  
(2021) 125 taxmann.com 150 (SC)





(2021) 125 taxmann.com 194 (SC)

## SUPREME COURT OF INDIA

**Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.**

A.M. KHANWILKAR, B.R. GAVAI AND KRISHNA MURARI, JJ.

CIVIL APPEAL NOS. 2943-2944 OF 2020 & OTHS.

MARCH 10, 2021

**Section 30**, read with **section 31**, of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Submission of - Whether where all actions of RP including acceptance of resolution plans after due date albeit before expiry of time line specified by IBC for completion of process, have been consciously approved by CoC by a thumping majority of 84.36 per cent, in view of paramount importance given to decision of CoC which is taken on basis of 'commercial wisdom', NCLAT was not correct in law in interfering with commercial decision taken by CoC by a thumping majority of 84.36 per cent - Held, yes (Para 156)

**Section 61**, read with **section 238A** of the Insolvency and Bankruptcy Code, 2016, and **section 14** of the Limitation Act, 1963 - Corporate Person's Adjudicating Authority - Appeals and Appellate Authority - Whether where Resolution applicant approached High Court in writ petition with specific grievance that procedure followed by NCLT, in approving resolution plan of another applicant one 'K', was in breach of principles of natural justice, provisions of **section 14** of Limitation Act would be available to Resolution applicant for exclusion of period during which it was bona fide prosecuting a remedy

before High Court from limitation period for preferring an appeal under **section 61** - Held, yes (Paras 64 and 85)

**Section 30**, read with **section 31**, of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Submission of - Resolution applicant objected to participation of another applicant submitting plan after due date - Thereafter, CoC resolved to direct all applicants to submit revised plans - Whether it cannot be held that having participated by submitting revised plans as directed by CoC, resolution applicant was estopped from challenging process on ground of acquiescence and waiver for reason that if applicant had not responded to such direction it had to run risk of being out of fray in view of relevant process memorandum - Held, yes (Para 132)

### CASE REVIEW

*Kotak Investment Advisors Ltd. v. Krishna Chamadia* (2021) 125 taxmann.com 193 (NCLT-New Delhi) (para 158) reversed.

*Consolidated Engineering Enterprises v. Pr. Secretary, Irrigation Department* (2008) 7 SCC 169 (para 73) and *Vodafone International Holdings BV v. Union of India* (2012) 17 taxmann.com 202/204 Taxman 408/341 ITR (SC) (para 130) followed.

*Union of India v. Popular Construction Co.* (2002) 37 SCL 622 (SC) (para 73); *Singh Enterprises v. CCE* (2008) 12 STT 21 (SC) (para 74); *CC&CE v. Hongo India (P.) Ltd.* (2009) 5 SCC 791 (para 75); *Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission* (2010) 5 SCC 23 (para 76); *Bengal Chemists & Druggists Association v. Kalyan Chowdhury* (2018) 90 taxmann.com 112/146 SCL 213 (SC) (para 77); *Neeraj Jhanji v. Commr. of Customs & Central Excise* (2015) 53 taxmann.com 95/49 GST 389 (SC) (para 80); *Ketan V. Parekh v. Special Director, Directorate of Enforcement* (2013) 29 taxmann.com 373 (SC) (para 83); *ITC Ltd. v. Blue Coast Hotels Ltd.* (2018) 91 taxmann.com 238/147 SCL 95 (SC) (para 127) and *Tarapore & Co. v. Cochin Shipyard Ltd.* (1984) 2 SCC 680 (para 128) distinguished.

## CASES REFERRED TO

*K. Sashidhar v. Indian Overseas Bank* (2019) 102 taxmann.com 139/152 SCL 312 (SC) (para 8), *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2019) 111 taxmann.com 234 (SC) (para 8), *Innoventive Industries Ltd. v. ICICI Bank Ltd.* (2017) 84 taxmann.com 320/143 SCL 625 (SC) (para 9), *ITC Ltd. v. Blue Coast Hotels Ltd.* (2018) 91 taxmann.com 238/147 SCL 95 (SC) (para 14), *Tarapore & Co. v. Cochin Shipyard Ltd.* (1984) 2 SCC 680 (para 15), *Kumar Dutta Prop. K.D. Trading v. Simplex Infrastructure Ltd.* 2019 SCC Online NCLAT 575 (para 15), *Asha Goyal v. Pharma Traders (P.) Ltd.* 2019 SCC Online NCLAT 150 (para 15), *Union of India v. Popular Construction Co.* (2002) 37 SCL 622 (SC) (para 16), *Singh Enterprises v. CCE* (2008) 12 STT 21 (SC) (para 16),

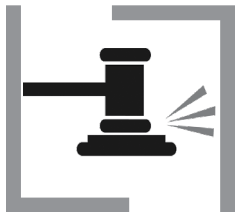
*Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission* (2010) 5 SCC 23 (para 16), *Radhika Mehra v. Vaaya Infrastructure LLP* (2020) 117 taxmann.com 715/160 SCL 675 (NCL - AT) (para 17), *Dhirendra Kumar v. Randstand India (P.) Ltd.* (2020) 116 taxmann.com 906 (NCL - AT) (para 17), *Neeraj Jhanji v. Commr. of Customs & C. Ex.* (2015) 53 taxmann.com 95/49 GST 389 (SC) (para 18), *G.J. Fernandez v. State of Karnataka* (1990) 2 SCC 488 (para 20), *NTPC Ltd. (Simhadri Project) v. Rajiv Chakraborty* (Civil Appeal No. 2798 of 2020, dated 16-11-2020) (para 20), *Whirlpool Corpn. v. Registrar of Trade Marks* (1998) 8 SCC 1 (para 24), *Babu Ram Prakash Chandra Maheshwari v. Antarim Zilla Parishad* (1969) 1 SCR 518 (para 24), *Nivedita Sharma v. Cellular Operators Association of India* (2011) 14 SCC 337 (para 24), *Ketan V. Parekh v. Special Director, Directorate of Enforcement* (2013) 29 taxmann.com 373 (SC) (para 28), *M.P. Steel Corporation v. CCE* (2015) 57 taxmann.com 399/51 GST 435 (SC) (para 28), *Union of India v. West Coast Paper Mills Ltd.* (2004) 3 SCC 458 (para 28), *Vodafone International Holding BV v. Union of India* (2012) 17 taxmann.com 202/204 Taxman 408/341 ITR 1 (SC) (para 31), *Binani Industries Ltd. v. Bank of Baroda* (2018) 99 taxmann.com 164/150 SCL 703 (NCL - AT) (para 34), *Consolidated Engineering Enterprises v. Pr. Secretary Irrigation Department* (2008) 7 SCC 169 (para 45), *Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd.* AIR 1950 SC 188 (para 46), *Town Municipal Counsel Athani v. Presiding Officer Labour Courts* (1969) 1 SCC 873 (para 46), *Nityananda M. Joshi v. Life Insurance Corporation of India* (1969) 2 SCC 199 (para 46), *CST v. Parson Tools*

& *Plants* 1975 taxmann.com 50 (para 46), *Kerala State Electricity Board v. T.P. Kundhaliumma* (1976) 4 SCC 634 (para 46), *Office on Special Duty (Land Acquisition) v. Shah Manilal Chandulal* (1996) 9 SCC 414 (para 46), *CST v. Madan Lal Das & Sons* 1977 taxmann.com 10 (SC) (para 48), *Bhudan Singh v. Nabi Bux* (1969) 2 SCC 481 (para 50), *J. Kumaradasan Nair v. Jric Sohan* (2009) 12 SCC 175 (para 50), *Commr. of Customs & C. Ex. v. Hongo India (P.) Ltd.* (2009) 5 SCC 791 (para 75), *Bengal Chemists & Druggists Association v. Kalyan Chowdhury* (2018) 90 taxmann.com 112/146 SCL 213 (SC) (para 77), *State of Goa v. Western Builders* (2006) 6 SCC 239 (para 81), *Embassy Property Development (P.) Ltd. v. State of Karnataka* (2019) 112 taxmann.com 56/(2020) 157 SCL 445 (SC) (para 84), *Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly* (1986) 3 SCC 156 (para 93), *Asstt. General Manager, State Bank of India v. Radhey Shyam Pandey* (2020) 6 SCC 438 (para 96), *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan* (2019) 5 SCC 725 (para 98), *Manak Lal v. Dr. Prem Chand* AIR 1975 SC 425 (para

105), *Krishna Bahadur v. Purna Theater* (2004) 8 SCC 229 (para 108), *State of Punjab v. Davinder Pal Singh Bhullar* (2011) 14 SCC 770 (para 111), *Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.* (2016) 14 SCC 161 (para 113), *Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh* (2020) 113 taxmann.com 421/158 SCL 567 (SC) (para 136) and *Arcelormittal India (P.) Ltd. v. Satish Kumar Gupta* (2018) 98 taxmann.com 99/150 SCL 354 (SC) (para 141).

**Ms. Ruby Singh Ahuja, Ms. Kalpana Unadkat, Prateek Kumar, Ms. Tahira Karanjawala, Anupm Prakash, Ms. Raveena Rai, Utkarsh Maria, Anmol Jassal, Advs. Neeraj Kishan Kaul, Sr. Adv., Suresh D. Dobhal, Nirmal Goenka, Shikhar Kumar, Advs., Gaurav Agrawal, AOR, K.V. Vishwanathan, Sr. Adv., Dheeraj Nair, Varghese Thomas, Ms. Vishrutyi Sahni, Advs., Shyam Divan, Sr. Adv., Ms. Pooja Mahajan, Avinash Amarnath, Ms. Mahima Singh, Avni Shrivastav, Advs., Ritesh Kumar, AOR, David Rao, M.S. Vishnu Shankar, Sriram Parakkat, Ms. Athira G. Nair, Advs., Atul Sharma and Gaurav Agrawal, AOR for the Appearing Parties.**

*For Full Text of the Judgment see*  
**(2021) 125 taxmann.com 194 (SC)**



(2021) 125 taxmann.com 393 (SC)

## SUPREME COURT OF INDIA

**Indus Biotech Private Limited v. Kotak India Venture  
(Offshore) Fund**

S. A. BOBDE, CJI.

A. S. BOPANNA AND V. RAMASUBRAMANIAN, JJ.

ARBITRATION PETITION (CIVIL) NO. 48 OF 2019

MARCH 26, 2021

**Section 3(12)**, read with **section 7** of the Insolvency and Bankruptcy Code, 2016, and **section 8** of the Arbitration and Conciliation Act, 1996 - Corporate insolvency resolution process - Default - Whether in any proceeding which is pending before Adjudicating Authority under **section 7** of IBC, if such petition is admitted upon Adjudicating Authority recording satisfaction with regard to default and debt being due from corporate debtor, any application under **section 8** of Arbitration Act, 1996 made thereafter will not be maintainable - Held, yes - Whether where petition under **section 7** of IBC is yet to be admitted and, in such proceedings, if an application under **section 8** of Act, 1996 is filed, Adjudicating Authority is duty bound to first decide application under **section 7** of IBC as outcome of Insolvency Application will ipso facto determine **section 8** Application - Held, yes - Respondent, financial creditor had filed an application under section 7 against petitioner, corporate debtor for its alleged default in redeeming Optionally Convertible Redeemable Preference Shares (OCRPS) subscribed by financial creditor under Share Subscription and Shareholders Agreement - However, while said Insolvency Application was sub-judice, petitioner

filed an application under **section 8** of Arbitration Act seeking directions from NCLT to refer parties to arbitration for settling their disputes, and simultaneously also filed Arbitration Petition under **section 11** of Arbitration Act before Supreme Court seeking appointment of arbitrators - NCLT allowed **section 8** Application and dismissed Insolvency Application, while noting that Arbitration Petition was pending adjudication before Supreme Court - Whether a dispute will not be arbitrable when a proceeding is in rem and insolvency proceedings are not in rem until Adjudicating Authority has applied its mind, recorded a default and admitted insolvency petition and mere filing cannot be taken as reason to trigger insolvency process in rem - Held, yes Whether since Adjudicating Authority had categorically recorded that they were not satisfied that a default had occurred, dismissal of petition under section 7 of IBC was justified - Held, yes (Paras 23, 25 to 29 and 38)

### CASE REVIEW

*Indus Biotech (P.) Ltd. v. Kotak India Venture Fund-I* (2020) 117 taxmann.com 912/160 SCL 554 (NCLT - Mum.) affirmed

*Vidya Drolia v. Durga Trading Corpn.* (2021) 2 SCC 1 (para 23) and *Duro Felguera S.A v. Gangavaram Port Ltd.* (2017) 9 SCC 729 (para 35) *followed*

### CASES REFERRED TO

*Innoventive Industries Ltd. v. ICICI Bank* (2017) 84 taxmann.com 320/143 SCL 625 (SC) (para 15), *Swiss Ribbons (P.) Ltd. v. Union of India* (2019) 101 taxmann.com 389/152 SCL 365 (SC) (para 16), *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.* (2011) 5 SCC 532 (para 16), *Vidya Drolia v. Durga Trading Corpn.* (2021) 2 SCC 1 (para 23), *A. Ayyasamy v. A. Paramasivam* (2016) 10 SCC 386 (para 23), *Pioneer Urban Land & Infrastructure Ltd. v. Union*

*of India* (2019) 108 taxmann.com 147/155 SCL 622 (para 24) and *Duro Felguera S.A. v. Gangavaram Port Ltd.* (2017) 9 SCC 729 (para 35).

**Ms. Radhika Gautam**, AOR, **Udita Singh**, AOR, **Jatin Pore**, Adv., **Ms. Ankita Agrawal**, Adv., **Chandra Prakash**, Adv., **Nakul Dewan**, Sr. Adv., **Somesh Chandra Jha**, AOR, **Rahul Narang**, Adv., **Iqbal Chagla**, Sr. Adv., **Ms. Mitali Gupta**, Adv., **Nitin Mishra**, AOR, **Pawanjit Bindra**, Adv., **Ms. Aashta Mehta**, Adv., **Ms. Vishakha**, Adv., **Ms. Deepanwite Priyanka**, AOR, **Atmaram N.S. Nadkarni**, Sr. Adv., **Vineet Malhotra**, Adv., **Mohit Paul**, AOR, **Abhishek Srinivasan**, Adv., **Vishal Gohri**, Adv., **S.S. Rebello**, Adv. and **Ms. Suncina Phul**, Adv. for the Appering Parties.

For Full Text of the Judgment see  
(2021) 125 taxmann.com 393 (SC)





(2021) 125 taxmann.com 39 (SC)

## SUPREME COURT OF INDIA

**P. Mohanraj v. Shah Brothers Ispat P. Ltd.**

ROHINTON FALI NARIMAN, NAVIN SINHA AND K.M. JOSEPH, JJ.

CIVIL APPEAL NO.10355 OF 2018 & OTHS.

MARCH 1, 2021

**Section 14** of the Insolvency and Bankruptcy Code, 2016 read with **sections 138** and **141** of the Negotiable Instruments Act, 1881 - Corporate insolvency resolution process - Moratorium - Whether for period of moratorium no **section 138/141** of NI Act, 1881 proceeding can continue or be initiated against corporate debtor, moratorium provision contained in **section 14** of IBC, 2016 would apply only to corporate debtor, natural persons mentioned in **section 141** continuing to be statutorily liable under Chapter XVII of NI Act - Held, yes - Whether thus, where individuals or firms are concerned, recovery of any property by an owner or lessor, where such property is occupied by or in possession of individual or firm can be recovered during moratorium period, unlike property of a corporate debtor - Held, yes (Para 77)

**Words & Phrases:** Expression 'proceedings' as appearing in **section 14** of the IBC.

Expression 'prosecution' in first proviso to **section 32A(1)** of IBC.

### CASE REVIEW

*BSI Ltd. v. Gift Holdings (P.) Ltd.* (2000) 2 SCC 737 (para 67); *Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.* (2000) 24 SCL 88 (SC) (para 68); *Inderjit*

*C. Parekh v. V.K. Bhatt* (1974) 4 SCC 313 (para 75); *Dy. Director, Directorate of Enforcement, Delhi v. Axis Bank* (2019) 104 taxmann.com 49 (Delhi) (para 76) distinguished. *Tayal Cotton (P.) Ltd. v. State of Maharashtra* (2018) 97 taxmann.com 12/49 SCL 453 (Bom.) (para 78) and *MBL Infrastructure Ltd. v. Manik Chand Somani* (CRR No. 3456 of 2018, dated 16-4-2019) (para 78) disagreed.

Judgment dated 2-4-2019 and 16-10-2019 set aside.

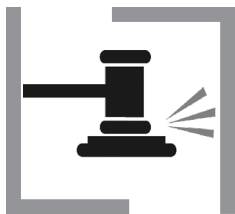
### CASES REFERRED TO

*Aneeta Hada v. Godfather Travels & Tours (P.) Ltd.* (2012) 21 taxmann.com 43/113 SCL 564 (SC) (para 8), *State Bank of India v. Ramakrishnan* (2018) 96 taxmann.com 271/149 SCL 107 (SC) (para 13), *State of Assam v. Ranga Mahammad* AIR 1967 SC 903 (para 15), *Jagdish Chander Gupta v. Kajaria Traders (India) Ltd.* (1964) 8 SCR 50 (para 16), *Rajasthan State Electricity Board v. Mohanlal* (1967) 3 SCR 377 (para 17), *CBI v. Braj Bhushan Prasad* (2001) 9 SCC 432 (para 18), *Godfrey Phillips India Ltd. v. State of U.P.* 2005 taxmann.com 1588 (SC) (para 19), *Vikram Singh v. Union of India* (2015) 9 SCC 502 (para 20), *Pioneer Urban Land & Infrastructure Ltd. v. Union of India* (2019) 108 taxmann.

com 147/155 SCL 622 (SC) (para 21), *Swiss Ribbons (P.) Ltd. v. Union of India* (2019) 101 taxmann.com 389/152 SCL 365 (SC) (para 23), *Macquarie Bank Ltd. v. Shilpi Lable Technologies Ltd.* (2017) 88 taxmann.com 180/(2018) 145 SCL 236 (SC) (para 27), *Giriraj Garg v. Coal India Ltd.* (2019) 5 SCC 192 (para 27), *Manish Kumar v. Union of India* (2021) 123 taxmann.com 343 (SC) (para 32), *CIT v. Ishwarlal Bhagwandas* (1966) 1 SCR 190 (para 43), *Goaplast (P.) Ltd. v. Chico Ursula D'souza* (2003) 44 SCL 472 (SC) (para 44), *Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.* (2008) 2 SCC 305 (para 45), *Damodar S. Prabhu v. Sayed Babalal H.* (2010) 101 SCL 27 (SC) (para 46), *JIK Industries Ltd. v. Amarlal V. Jumani* (2012) 3 SCC 255 (para 46), *Keushalya Devi Massand v. Roopkishore Khore* (2011) 4 SCC 593 (para 47), *R. Vijayan v. Baby* (2012) 17 taxmann.com 77/111 SCL 270 (SC) (para 48), *Dashrath Rupsingh Rathod v. State of Maharashtra* (2014) 49 taxmann.com 497/128 SCL 26 (SC) (para 49), *Lafarge Aggregates & Concrete India (P.) Ltd. v. Sukarsh Azad* (2014) 41 taxmann.com 188/123 SCL 346 (SC) (para 50), *Meters & Instruments (P.) Ltd. v. Kanchan Mehta* (2017) 87 taxmann.com 6/144 SCL 339 (SC) (para 51), *M. Abbas Haji v. T.N. Channakeshava* (2019) 9 SCC 606 (para 52), *H.N. Jagadeesh v. R. Rajeshwari* (2019) 16 SCC 730 (para 52), *Abhilash Vinodkumar Jain v. Cox & King (India) Ltd.* (1995) 3 SCC 732 (para 54), *Niaz Mohd v. State of Haryana* (1994) 6 SCC 332 (para 60), *T.N. Godavarman*

*Thirumulpad (102) v. Ashok Khot* (2006) 5 SCC 1 (para 60), *Andre Paul Terence Ambard v. Attorney General of Trinidad & Tobago* AIR 1936 PC 141 (para 61), *Sahdeo v. State of U.P.* (2010) 3 SCC 705 (para 62), *Meninderjit Singh Bitta v. Union of India* (2012) 1 SCC 273 (para 62), *Kanwar Singh Saini v. High Court of Delhi* (2012) 4 SCC 307 (para 62), *T.C. Gupta v. Bimal Kumar Dutta* (2014) 14 SCC 446 (para 62), *BSI Ltd. v. Gift Holdings (P.) Ltd.* (2000) 2 SCC 737 (para 67), *Kusum Ingots & Alloys Ltd. v. Pennar Petrosen Securities Ltd.* (2000) 24 SCL 88 (SC) (para 68), *S.V. Kandeekar v. V.M. Deshpande* (1972) 1 SCC 438 (para 70), *Sudarshan Chits (I.) Ltd. v. O. Sukumaran Pillai* (1984) 4 SCC 657 (para 70), *Central Bank of India v. Elmot Engg. Co.* (1994) 4 SCC 159 (para 70), *D.K. Kapur v. Reserve Bank of India* (2001) 30 SCL 96 (Delhi) (para 71), *Indorama Synthetics (I.) Ltd. v. State of Maharashtra* (2016) 70 taxmann.com 160/136 SCL 70 (Bom.) (para 72), *Power Grid Corpn. of India Ltd. v. Jyoti Structures Ltd.* (2017) 88 taxmann.com 124/(2018) 145 SCL 449 (Delhi) (para 74), *Inderjit C. Parekh v. V.K. Bhatt* (1974) 4 SCC 313 (para 75), *Dy. Director, Directorate of Enforcement Delhi v. Axis Bank* (2019) 104 taxmann.com 49 (Delhi) (para 76), *Tayal Cotton (P.) Ltd. v. State of Maharashtra* (2018) 97 taxmann.com 12/49 SCL 453 (Bom.) (para 78), *MBL Infrastructure Ltd. v. Manik Chand Somani* (CRR No. 3456 of 2018, dated 16-4-2019) (para 78).

For Full Text of the Judgment see  
(2021) 125 taxmann.com 39 (SC)



(2021) 125 taxmann.com 336 (SC)

## SUPREME COURT OF INDIA

**Small Scale Industrial Manufactures Association (Regd.) v. Union of India**

ASHOK BHUSHAN, R. SUBHASH REDDY AND M.R. SHAH, JJ.

WRIT PETITION (C) NOS. 476 OF 2020 & OTHERS

WRIT PETITION (C) DIARY NO. 12389 OF 2020 & OTHERS

MARCH 23, 2021

**Section 52** of the Banking Regulation Act, 1949 - Power of Central Government to make Rules - Whether no writ of mandamus can be issued directing Government/RBI to announce/declare particular relief packages and/or to declare a particular policy due to Covid-19 pandemic - Held, yes - Whether when a conscious decision has been taken not to waive interest during moratorium period and a policy decision has been taken to give relief to borrowers by deferring payment of instalments and so many other reliefs are offered by RBI and thereafter by bankers independently considering Report submitted by Kamath Committee consisting of experts, interference of Court is not called for - Held, yes - Whether there was no justification in policy decision of Central Government to restrict relief of not charging interest on interest with respect to loans upto Rs. 2 crores only - Held, yes - Whether once payment of instalment is deferred as per Circular, dated 27-3-2020, non-payment of instalment during moratorium period cannot be said to be wilful and, therefore, there is no justification to charge interest on interest/compound interest/penal interest for period during moratorium - Held, yes -

Whether, therefore, there shall not be any charge of interest on interest/compound interest/penal interest for period during moratorium from any of borrowers and whatever amount is recovered by way of interest on interest/compound interest/penal interest for period during moratorium, same shall be refunded or adjusted - Held, yes (Paras 19, 23 and 31)

### CASES REFERRED TO

*Charan Lal Sahu v. Union of India* (1990) 1 SCC 613 (para 3), *Union Carbide Corporation Ltd. v. Union of India* (1991) 4 SCC 584 (para 3), *Kailash Chand Sharma v. State of Rajasthan* (2002) 6 SCC 562 (para 3), *M. Nagaraj v. Union of India* (2006) 8 SCC 212 (para 3), *Rattan Arya v. State of T.N.* (1986) 3 SCC 385 (para 3), *State of W.B. v. Anwar Ali Sarkar* AIR 1952 SC 75 (para 3), *D.S. Nakara v. Union of India* (1983) 1 SCC 305 (para 3), *Roop Chandra Adlakha v. Delhi Development Authority* 1989 Supp. (1) SCC 116 (para 3), *T.N. Godavarman Thirumulkpad v. Union of India* (1997) 2 SCC 267 (para 3), *Pradip Kumar Maitya v. Chinmoy Kumar Bhunia* (2013) 11 SCC 122 (para 7.24.3),

*Chinnamarkathian v. Ayyavoo* (1982) 1 SCC 159 (para 7.24.3), *Official Liquidator v. Dharti Dhan (P.) Ltd.* (1977) 2 SCC 166 (para 7.24.3), *Smt. Bachahan Devi v. Nagar Nigam* (2008) 12 SCC 372 (para 7.24.3), *Delhi Administration v. Umrao Singh* (2012) 1 SCC 194 (para 7.24.3), *Union of India v. Kumho Petrochemicals Co. Ltd.* (2017) 83 taxmann.com 149/63 GST 311 (SC) (para 7.24.3), *Arun Kumar Agrawal v. Union of India* (2013) 36 taxmann.com 282/122 SCL 120 (SC) (para 7.25), *Metropolis Theatre Co. v. Chicago* (1913) 228 U.S. 61 (para 7.25), *Peerless General Finance and Investment Co. Ltd. v. RBI* (1992) 2 SCC 343 (para 7.25.1), *Federation of Railway Officers Association v. Union of India* (2003) 4 SCC 289 (para 7.25.2), *Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal* (2007) 8 SCC 418 (para 7.25.3), *State of M.P. v. Nandlal Jaiswal* (1986) 4 SCC 566 (para 7.25.4), *BALCO Employees' Union (Regd.) v. Union of India* (2002) 2 SCC 333 (para 7.25.4), *Dalmia Cement (Bharat) Ltd. v. Union of India* (1996) 10 SCC 104 (para 7.25.4), *Villianur Iyarkkal Padukappu Maiyam v. Union of India* (2009) 7 SCC 561 (para 7.25.4), *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664 (para 7.25.4), *R.K. Garg v. Union of India* (1981) 4 SCC 675 (para 7.25.4), *Shri Sitaram Sugar Co. Ltd. v. Union of India* (1990) 3 SCC 223 (para 9.3), *Prag Ice & Oil Mills v. Union of India* AIR 1978 SC 1296 (para 9.3), *P.T.R. Exports (Madras)(P.) Ltd. v. Union of India* (1996) 5 SCC 268 (para 9.3) and *Permian Basin Area Rate Cases*, In re 20 L Ed (2d) 312 (para 14.3).

**Kunal Vajani**, Adv., **Kunal Mimani**, AOR, **Shubhang Tandon**, Adv., **Abhimanyu**

**Bhandari**, Adv., **Ms. Rooh-e-hina Dua**, AOR, **Cheitanya Madan**, Adv., **Pranjal Kishore**, Adv., **Atul Shankar Vinod**, Adv., **Vijay Raghunathan**, Adv., **Dinesh Balachandran**, Adv., **M.P. Vinod**, AOR, **Ashish Agarwal**, Adv., **Ms. Shashi Kiran**, AOR, **Ms. Sangeeta Bhalla**, Adv., **Ms. Kirti Sinha**, Adv., **Arjun Chaudhary**, Adv., **Ashish Virmani**, AOR, **Himanshu Dhuper**, Adv., **Nishi Chaudhary**, Adv., **Ms. Manjeet Kirpal**, **Yashartha Gupta**, Adv., **Chandra Prakash**, AOR, **B.V. Balaram Das**, AOR, **Ravindra Shrivastava**, Sr. Adv., **B. Ramana Murthy**, AOR, **Kumar Dushyant Singh**, AOR, **Devesh Chauvia**, Adv., **Mukul Lather**, Adv., **Ms. Pooja Singh**, Adv., **Ms. Swati Setia**, AOR, **Siddharth Bhatnagar**, Sr. Adv., **Shashank Kunwar**, Adv., **Ms. Sonia Dube**, Adv., **Shatadru Chakraborty**, Adv., **Ms. Kanchan Yadav**, Adv., **Anurag Singh**, Adv., **Ms. Surbhi Anand**, Adv., **Anil Soni**, Adv., **Harish Pandey**, AOR, **Utsav Trivedi**, Adv., **Chirag Shah**, Adv., **Abhinay**, Adv., **Ms. Pragya Wal**, Adv., **Himanshu Sachdeva**, Adv., **Ms. Srishti Kumar**, Adv., **Ms. Astha Prasad**, Adv., **A. Karthik**, AOR, Adv., **Syed Jafar Alam**, Adv., **Shankh Sengupta**, Adv., **Ms. Tine Abraham**, Adv., **Ms. Chhavi Jain**, Adv., **Huzefa Ahmadi**, Sr. Adv., **Mahesh Agarwal**, Adv., **Vijayesh Atri**, Adv., **Ankur Saigal**, Adv., **Rohan Sharma**, Adv., **E.C. Agrawala**, AOR, **Mukul Rohatgi**, Sr. Adv., **Sanjay Kapur**, AOR, **V.M. Kannan**, Adv., **Sambit Panja**, Adv., **Harish Salve**, Sr. Adv., **Ms. Megha Karnwal**, **Gaurav Sharma**, AOR, **Dhawal Mohan**, Adv., **Prateek Bhatia**, Adv., **Ms. Alankrita Sinha**, Adv., **Keshav Mohan**, Adv., **R.K. Awasthi**, Adv., **Prashant Kumar**, Adv., **Piyush Vatas**, Adv., **Ms. Ritu Arora**, Adv., **Santosh Kumar-1**, AOR, **Ms. Manju Jetley**, AOR, **Abhinay**, AOR, **Manoj V. George**, Adv., **Ms. Shilpa Liza George**,

AOR, **Ms. Bhavika**, Adv., **M.P. Vinod**, AOR, **Mrs. Anil Katiyar**, AOR, **Jinendra Jain**, AOR, **Ramesh Babu M. R.**, AOR, **Abhikalp Pratap Singh**, AOR, **Abhigya Kushwah**, AOR, **Ms. Sunita Yadav**, **Pradeep Kumar Dubey**, Adv.,

**Siddharth Rajkumar Murarka**, **Ms. Anamika Kushwaha**, **Ms. Nandita Rao**, Adv., **Ms. Mahija Reddy**, Adv., **K.N. Agnihotri** and **Virender Arora**, Adv. *for the Appearing Parties.*

*For Full Text of the Judgment see*  
**(2021) 125 taxmann.com 336 (SC)**





(2021) 125 taxmann.com 394 (SC)

## SUPREME COURT OF INDIA

**Laxmi Pat Surana v. Union Bank of India**

A. M. KHANWILKAR, B.R. GAVAI AND KRISHNA MURARI, JJ.

CIVIL APPEAL NO. 2734 OF 2020

MARCH 26, 2021

**Section 5(8)**, read with **section 7**, of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Financial debt - Whether an action under **section 7** can be initiated by financial creditor (Bank) against a corporate person (being a corporate debtor) concerning guarantee offered by it in respect of a loan account of principal borrower, who had committed default and is not a 'corporate person' within meaning of Code - Held, yes - Whether expression 'debt' in **section 3(11)** is wide enough to include liability of a corporate person on account of guarantee given by it in relation to a loan account of any person including not being a corporate person in event of default committed by latter and it would still be a 'financial debt' of corporate person, arising from guarantee given by it, within meaning of **section 5(8)** - Held, yes - Whether where loan was offered to a proprietary firm (not a corporate person), action under **section 7** can be initiated even against corporate person who had offered guarantee in respect of that transaction - Held, yes - Whether upon default committed by principal borrower, liability of company (corporate person), being guarantor, instantly triggers right

of financial creditor to proceed against corporate person (being a corporate debtor) - Held, yes - Whether an application under **section 7** filed after three years from date of declaration of loan as Non-performing Asset which is date of default, is not barred by limitation, if loan is acknowledged by principal borrower from time to time - Held, yes (Paras 24, 27, 28, 41, and 42)

**Section 3(8)**, read with **section 3(7)**, of the Insolvency and Bankruptcy Code, 2016 - Corporate debtor - Whether if guarantor is a corporate person as defined in **section 3(7)**, it would come within purview of expression 'corporate debtor', within meaning of **section 3(8)** - Held, yes - Whether principal borrower may or may not be a corporate person, but if a corporate person extends guarantee for loan transaction concerning a principal borrower not being a corporate person, it would still be covered within meaning of expression 'corporate debtor' in **section 3(8)** - Held, yes (Paras 20 and 21)

### CASE REVIEW

*Laxmi Pat Surana v. Union of India* (2020) 117 taxmann.com 192/160 SCL 664 (para 42) affirmed.

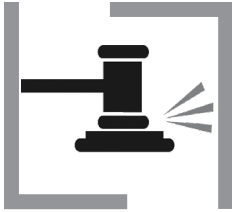
**CASES REFERRED TO**

*Laxmi Pat Surana v. Union of India* (2020) 117 taxmann.com 192/160 SCL 664 (NCLAT - New Delhi) (para 7), *Shanti Conductors (P.) Ltd. v. Assam State Electricity Board* (2020) 2 SCC 677 (para 10), *Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P.) Ltd.* (2020) 118 taxmann.com 323 (SC) (para 11), *B.K. Educational Services (P.) Ltd. v. Parag Gupta & Associates* (2018) 98 taxmann.com 213/150 SCL 293 (SC) (para 11), *Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd.* (2019) 109 taxmann.com 395/156 SCL 397

(SC) (para 11), *Vashdeo R. Bhojwani v. Abhyudaya Co. Operative Bank Ltd.* (2019) 109 taxmann.com 198/156 SCL 539 (SC) (para 11), *Sagar Sharma v. Phoenix ARC (P.) Ltd.* (2019) 110 taxmann.com 50/156 SCL 707 (SC) (para 11), *Bank of Bihar Ltd. v. Dr. Damodar Prasad* (1969) 1 SCR 620 (para 12), *Jignesh Shah v. Union of India* (2019) 109 taxmann.com 486/156 SCL 542 (SC) (para 32) and *Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P.) Ltd.* (2020) 15 SCC 1 (para 33).

**Ashutosh Dubey**, Adv., for the Petitioner.  
**O.P. Gaggar**, Adv. for the Respondent.

For Full Text of the Judgment see  
**(2021) 125 taxmann.com 394 (SC)**



(2021) 125 taxmann.com 357 (SC)

## SUPREME COURT OF INDIA

**Sesh Nath Singh v. Baidyabati Sheoraphuli Co-Operative Bank Ltd.**

INDIRA BANERJEE AND HEMANT GUPTA, JJ.

CIVIL APPEAL NO. 9198 OF 2019

MARCH 22, 2021

**Section 238A**, read with **section 7**, of the Insolvency and Bankruptcy Code, 2016 and **section 14** of the Limitation Act, 1963 - Corporate insolvency resolution process - Limitation period - Financial creditor granted cash credit facility to corporate debtor - Corporate debtor committed default in repayment - Account of corporate debtor was declared NPA and financial creditor issued demand notice under **section 13(2)** of SARFAESI Act to corporate debtor - Corporate debtor filed a writ petition challenging said demand notice and High Court restrained financial creditor from taking any steps against corporate debtor under SARFAESI Act, till further orders - Thereafter, financial creditor filed application under **section 7** - Corporate debtor raised a dispute that application had been filed after about 5 years and 5 months from date of accrual of cause of action, thus, said application was time barred - Whether IBC does not exclude application of **section 6** or **14** or **18** or any other provision of Limitation Act to proceedings under IBC in NCLT/NCLAT - Held, yes - Whether **section 14** of Limitation Act makes it clear that an applicant who has prosecuted another civil proceeding with due diligence, before a forum which

is unable to entertain same on account of defect of jurisdiction or any other cause of like nature, is entitled to exclusion of time during which applicant had been prosecuting such proceeding, in computing period of limitation - Held, yes - Whether Chief Metropolitan Magistrate or Judicial Magistrate, as case may be, exercising powers under SARFAESI Act, functions as a Civil Court/Executing Court and therefore, proceedings under SARFAESI Act would, be deemed to be civil proceedings in a Court - Held, yes - Whether thus, proceedings under SARFAESI Act would qualify for exclusion under **section 14** of Limitation Act - Held, yes - Whether in view of above, financial creditor having bona fide, within period of limitation, initiated proceedings against corporate debtor under SARFAESI Act, time period from date of notice under **section 13(2)** of SARFAESI Act to when High Court had passed order against financial creditor was to be excluded in computing period of limitation for filing CIRP application - Held, yes (Paras 77, 84, 87, 88 and 99)

Words and Phrases : Expression 'Court' in **section 14** of the Limitation Act, 1963 and Expression 'As far as may be' in **section**

**238A of the Insolvency and Bankruptcy Code, 2016****CASE REVIEW**

*Sesh Nath Singh v. Baidyabati Sheoraphuli Co-operative Bank Ltd.* (2020) 114 taxmann.com 282/158 SCL 211 (NCL-AT) affirmed.

*Ishrat Ali v. Cosmos Cooperative Bank Ltd.* (2020) 120 taxmann.com 288/162 SCL 549 (para 96) set aside

*N. C. United Bank of India v. Satyawati Tandon* (2010) 8 SCC 110 (para 97) followed.

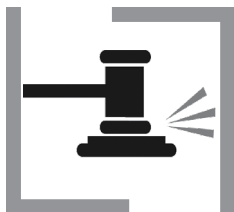
**CASES REFERRED TO**

*Sesh Nath Singh v. Baidyabati Sheoraphuli Co-Operative Bank Ltd.* (2020) 114 taxmann.com 282/158 SCL 211 (NCL-AT) (para 1), *Ishrat Ali v. Cosmos Cooperative Bank Ltd.* (2020) 120 taxmann.com 288/162 SCL 549 where the (NCL-AT) (para 24), *Mobilox Innovations (P.) Ltd. v. Kirusa Software (P.) Ltd.* (2017) 85 taxmann.com 292/144 SCL 37 (SC) (para 28), *Reliance Asset Reconstruction Co. Ltd. v. Hotel Poonja International (P.) Ltd.* (Civil Appeal No. 4221 of 2020, dated 21-1-2021) (para 29), *Innoventive Industries Ltd. v. ICICI Bank Ltd.* (2017) 84 taxmann.com 320/143 SCL 625 (SC) (para 39), *K. Venkateswara Rao v. Bekkam Narasimha Reddi* AIR 1969 SC 872 (para 46), *Nityananda M. Joshi v. Life Insurance Corporation of India* (1969) 2 SCC 199 (para 46), *Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd.* (2019) 109 taxmann.com 395/156 SCL 397 (SC) (para 52), *B.K. Educational Services (P.) Ltd. v. Parag Gupta & Associate* (2018)

98 taxmann.com 213/150 SCL 293 (SC) (para 54), *Radha Export (India) (P.) Ltd. v. K.P. Jayaram* (2020) 118 taxmann.com 560/(2021) 163 SCL 210 (SC) (para 55), *Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (P.) Ltd.* (2020) 118 taxmann.com 323 (SC) (para 56), *Ramlal Motilal and Chhotelal v. Rewa Coalfields Ltd.* AIR 1962 SC 361 (para 60), *Krishna v. Chattappan* (1890) ILR 13 Mad. 269 (para 60), *Shakuntla Devi Jain v. Kuntal Kumar* AIR 1969 SC 575 (para 60), *State of West Bengal v. Administrator, Howrah Municipality* (1972) 1 SCC 366 (para 60), *State of Goa v. Western Builders* (2006) 6 SCC 239 (para 71), *Union of India v. Popular Construction Co.* (2002) 37 SCL 622 (SC) (para 71), *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department* (2008) 7 SCC 169 (para 72), *Commissioner M.P. Housing Board v. Mohanlal & Co.* (2016) 14 SCC 199 (para 74), *Bihta Co-operative Development Cane Marketing Union Ltd. v. Bank of Bihar* AIR 1967 SC 389 (para 78), *S. Sundaram Pillai v. V.R. Pattabiraman* (1985) 1 SCC 591 (para 79), *New India Sugar Mills Ltd. v. CST* AIR 1963 SC 1207 (para 92), *Busching Schmitz (P.) Ltd. v. P.T. Menghani* AIR 1977 SC 1569 (para 93), *S.A.L. Narayan Rao v. Ishwarlal Bhagwandas* AIR 1965 SC 1818 (para 96) and *United Bank of India v. Satyawati Tandon* (2010) 8 SCC 110 (para 97).

**Siddhartha Dave**, Sr. Adv. **Ms. Pallavi Langar**, AOR, **Ms. Poushali Banerjee**, Adv. and **Aditya Vaibhav Singh**, Adv. for the Appellant. **Pranay Agarwal**, Adv. and **Rajeev Singh**, AOR for the Respondent.

For Full Text of the Judgment see  
(2021) 125 taxmann.com 357 (SC)



(2021) 125 taxmann.com 360 (SC)

## SUPREME COURT OF INDIA

**Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.**

A.M.KHANWILKAR, DINESH MAHESHWARI AND SANJIV KHANNA,

CIVIL APPEAL NO. 3395 OF 2020 AND OTHERS\*

MARCH 24, 2021

**Section 31**, read with **sections 30** and **60** of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Approval of - Corporate debtor company JIL defaulted in several of its obligations, including those in completion of real estate projects and in payment of dues of lender banks - CIRP application filed by IDBI bank was admitted and moratorium was declared - Later on, resolution plan submitted by NBCC was approved by CoC with 97.3 per cent voting shares - NCLT approved said Resolution Plan with some modifications and directions while accepting some of objections like that of dissenting financial creditor bank and land providing agency - Objections were raised in instant appeal against above modification - Whether Adjudicating Authority has limited jurisdiction in matter of approval of resolution plan and there is no scope for interference with commercial aspects of decision of CoC - Held, yes - Whether had Adjudicating Authority found any shortcoming in resolution plan *vis-a-vis* specified parameters, it should send resolution plan back to CoC only for re-submission after satisfying parameters delineated by I&B Code - Held, yes - Whether, therefore, instant resolution plan was to be send back to CoC - Held, yes (Paras 78 & 216(A))

**Section 31**, read with **section 28**, of the Insolvency and Bankruptcy Code, 2016,

read with **regulation 39** of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Insolvency resolution process-Corporate Persons) Regulations, 2016 - Corporate insolvency resolution Process - Resolution plan - Approval of - Whether there is no prohibition in scheme of I&B Code and CIRP Regulations that CoC could not simultaneously consider and vote upon more than one resolution plan at same time for electing one of available options - Held, yes (Paras 85 & 216(B))

**Section 53**, read with **section 30** of the insolvency and Bankruptcy Code, 2016, and **Regulation 38** of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 - Corporate liquidation process - Assets, distribution of - Whether by direct payment in cash or by allowing recovery of amount *via* mode of enforcement of security interest, dissenting financial creditor is entitled to receive “amount payable” in monetary terms and not in any other term - Held, yes - Proposal in approved resolution plan for corporate debtor was to effect that if dissenting financial creditors would be entitled to some amount in nature of liquidation value, they would be provided such liquidation value in form of proportionate share in equity of real estate project for setup of which corporate



debtor was constituted as a special purpose vehicle by two companies JAL and TEA and also transfer of certain land parcels belonging to corporate debtor - Dissenting financial creditor contended that it was entitled to receive cash payment as per liquidation value and that providing land and equity in lieu of requisite payment was entirely impermissible - Adjudicating authority disapproved proposal in resolution plan as regards treatment of dissenting financial creditor and proceeded to modify resolution plan in manner that resolution applicant shall pay to dissenting financial creditor amount that was receivable in 12 monthly instalments together with interest - Whether adjudicating authority had not erred in disapproving treatment of dissenting financial creditor in resolution plan, but had erred in modifying terms of resolution plan and in not sending matter back to committee of creditors for reconsideration - Held, yes (Paras 121.2, 129, 130 & 216(D))

**Section 31**, read with **section 30** of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Approval of - Whether if a claim is not made within stipulated time, same could not become part of information memorandum prepared by IRP and same would not enter into consideration of resolution applicant and also of CoC - Held, yes - Resolution plan approved by CoC provided for 100 per cent upfront payment to fixed deposit holders whose claims were forming part of admitted financial debt - NCLT proceeded to modify said terms of resolution plan as approved by CoC and had provided that resolution applicant shall make provision to clear even dues of unclaimed fixed deposit holders when they would make a claim and such a right was to remain in force as long as they were entitled to make claim

under Companies Act, 2013 - Resolution applicant in instant appeal contended that such directions were wholly unjustified - Whether there was no justification in directions contained in order passed by NCLT, and same was to be annulled - Held, yes (Paras 136 & 216(E))

**Section 31**, read with **section 30** of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Approval of - Whether home buyers as a class having assented to resolution plan, any individual homebuyer or any association of homebuyers could not maintain a challenge to resolution plan and could not be treated as dissenting financial creditor or an aggrieved person - Held, yes - Whether where resolution plan comprehensively dealt with all assets and liabilities of corporate debtor, no housing project of corporate debtor could be segregated merely for reason that same had been completed or was nearing completion - Held, yes (Paras 175 & 216 (I))

**Section 31** of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Approval of - Corporate debtor JIL was an SPV constituted under a Concession Agreement between company TEA and company JAL for developing a real estate project - Petition for corporate insolvency resolution was admitted for Corporate debtor JIL - On other hand, pursuant to orders passed by instant Supreme Court in **Chitra Sharma v. Union of India (2018) 92 taxmann.com 264/147 SCL 86**, an amount of INR 750 crores was deposited in Supreme Court by JAL - While approving resolution plan for Corporate debtor JIL, NCLT directed this amount along with interest be transferred to NCLT; and, thus, placed this amount in asset pool of JIL - Whether said amount and accrued interest

thereupon, being property of JAL, stipulation in resolution plan concerning its usage by JIL or resolution applicant could not be approved and, hence, that part of order of NCLT was to be set aside - Held, yes - Whether question as to whether any amount was receivable by JIL and/or its homebuyers from JAL against advance towards construction and with reference to admitted liability to tune of INR 195 crores as on 31-03-2020, would be determined by NCLT after reconciliation of accounts in terms of directions contained in instant judgment - Held, yes - Whether amount, if found receivable by JIL, be made over to JIL and remaining amount together with accrued interest be refunded to JAL in an appropriate account - Held, yes - Whether instant matter being related to CIRP of JIL, no other orders were to be passed in relation to amount that would be refunded to JAL because treatment of said amount in asset pool of JAL would remain subject to such orders as might be passed by competent authority dealing with affairs of JAL - Held, yes - Whether Clause of resolution plan, providing for extinguishment of security interest of lenders of JAL could not have been approved by Adjudicating Authority, particularly in relation to security interest that had not been discharged; this part of order of Adjudicating Authority was to be set aside - Held, yes - Whether further, adequate provision was required to be made in resolution plan as regards utilisation of land bank of 758 acres, that had become available to JIL free from encumbrance in terms of judgment of instant Supreme Court in [Anuj Jain v. Axis Bank Ltd. \(2020\) 114 taxmann.com 656](#) - Held, yes (Paras 216(J) & 216(K))

**Section 61**, read with **section 31**, of the Insolvency and Bankruptcy Code, 2016 - Corporate person's Adjudicating Authorities

- **Appeals and Appellate Authority - Successful Resolution applicant preferred an appeal against order before NCLAT approving resolution plan passed by CoC with majority decision with modification - Appellate authority, while issuing notice to unrepresented parties, made an interim order that approved resolution plan may be implemented subject to outcome of appeal but at same time, also provided that IRP might constitute an 'Interim Monitoring Committee' comprising of successful resolution applicant and three major institutional financial creditors, who were members of CoC - Whether appellate authority was not justified in providing for an Interim Monitoring Committee for implementation of resolution plan in question during pendency of appeals; hence, impugned order passed by NCLAT was to be set aside - Held, yes (Para 216(M))**

**Words and phrases:** Expressions 'payment' and 'amount to be paid' as occurring in [section 30\(2\)](#) of the Insolvency and Bankruptcy Code, 2016

**Interpretation of statutes:** Rule of contextual interpretation

## CASE REVIEW

*Nand Kishore Gupta v. State of U.P.* (2010) 10 SCC 282 (Para 102.2); *Wg Cdr. Arifur Rahman Khan and Alexa Sultara v. DLF Southern Homes (P.) Ltd.* 2020 SCC OnLine SC 667 (Para 171.1.1), distinguished.

*NBCC (India) Ltd. v ICICI Bank Ltd.* (2021) 125 taxmann.com 589 (NCLAT - New Delhi) (para 216M) set aside.

## Cases Referred to

*Chitra Sharma v. Union of India* (2018) 92 taxmann.com 264/147 SCL 86 (SC) (para 4.2), *Jaiprakash Associates Ltd. v. IDBI*

*Bank Ltd.* (2019) 111 taxmann.com 46/156 SCL 782 (SC) (para 4.3), *Anuj Jain v. Axis Bank Ltd.* (2020) 114 taxmann.com 656 (SC) (para 4.4), *Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh* (2020) 113 taxmann.com 421/158 SCL 567 (SC) (para 45), *Pioneer Urban Land & Infrastructure Ltd. v. Union of India* (2019) 108 taxmann.com 147/155 SCL 622 (SC) (para 45), *Embassy Property Development (P.) Ltd. v. State of Karnataka* (2019) 112 taxmann.com 56/(2020) 157 SCL 445 (SC) (para 47.1), *Swiss Ribbons (P.) Ltd. v. Union of India* (2019) 101 taxmann.com 389/152 SCL 365 (SC) (para 63.2), *K. Sashidhar v. Indian Overseas Bank* (2019) 102 taxmann.com 139/152 SCL 312 (SC) (para 66), *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2019) 111 taxmann.com 234 (SC) (para 66), *Pradumna Kumar Jain v. U.P. Secondary Education Services Commission* (1997) 30 ALR 339 (para 77.4), *Gajraj v. State of U.P.* 2011 SCC Online All 1711 (para 88), *Savitri Devi v. State of U.P.* (2015) 7 SCC 21 (para 88), *India Thermal Power Ltd. v. State of M.P.* (2000) 3 SCC 379 (para 95.1), *Kerala State Electricity Board v. Kurien E. Kalathil* (2000) 6 SCC 293 (para 95.1), *Municipal Corporation of Greater Mumbai (MCGM) v. Abhilash Lal* (2019) 111 taxmann.com 405/(2020) 157 SCL 477 (SC) (para 95.5), *Nand Kishore Gupta v. State of U.P.* (2010) 10 SCC 282 (para 99.5), *Arcelor Mittal India (P.) Ltd. v. Satish Kumar Gupta* (2018) 98

taxmann.com 99/150 SCL 354 (SC) (para 99.9), *Himachal Pradesh Housing & Urban Development Authority v. Ranjit Singh Rana* (2012) 4 SCC 505 (para 113.2.1), *Samuel Katkin & Doris Katkin v. Commr. of Internal Revenue* (1978) 570 F.2d 139 (CA) (para 113.2.1), *White v. Elmdene Estates Ltd.* 1959 All ER 605 (CA) (para 113.2.1), *CIT v. Sodra Devi* AIR 1957 SC 832 (para 113.2.3), *Kolkata Metropolitan Development Authority v. Gobinda Chandra Makal* (2011) 9 SCC 207 (para 113.2.3), *Indian Handicrafts Emporium v. Union of India* (2003) 7 SCC 589 (para 113.2.3), *CIT v. Venkateswara Hatcheries (P.) Ltd.* (1999) 103 Taxman 503/237 ITR 174 (SC) (para 113.2.3), *Union of India v. Sankalchand Himatlal Sheth* (1977) 4 SCC 193 (para 113.2.3), *State through Central Bureau of Investigation v. Parmeshwaran Subramani* (2009) 9 SCC 729 (para 113.2.4), *Rathi Khandsari Udyog v. State of Uttar Pradesh, 1987 taxmann.com 838 (SC)* (para 114.3), *Dadi Jagannadham v. Jammuler Ramulu* (2001) 7 SCC 71 (para 115), *Vodafone International Holdings BV v. Union of India* (2012) 17 taxmann.com 202/204 Taxman 408/341 ITR 1 (SC) (para 139), *Wg. Cdr. Arifur Rahman Khan and Alexa Sultana v. DLF Southern Homes (P.) Ltd.* 2020 SCC Online SC 667 (Para 159.4.4), *ONGC v. Association of Natural Gas Consuming Industries* (2001) 6 SCC 627 (para 178.4) and *South Eastern Coalfields Ltd. v. State of M.P.* (2003) 8 SCC 648 (para 186).

\* Arising out of NCLAT order dated 22-4-2020.

For Full Text of the Judgment see  
(2021) 125 taxmann.com 360 (SC)



(2021) 127 taxmann.com 694 (NCLAT - New Delhi)

## NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI BENCH

**Committee of Creditors of EMCO Ltd. v. Mrs. Mary Mody**

ANANT BIJAY SINGH, JUDICIAL MEMBER

AND MS. SHREESHA MERLA, TECHNICAL MEMBER

COMPANY APPEAL (AT) (INSOLVENCY) NO. 307 OF 2020

MARCH 2, 2021

**Section 28** of the Insolvency and Bankruptcy Code, 2016 - Approval of committee of creditors for certain actions - Whether Resolution Professional could raise interim finance only subject to approval of Committee of Creditors by a vote of 66 per cent - Held, yes - Adjudicating Authority vide impugned order directed Committee of Creditors of corporate debtor company to provide interim funds to Resolution Professional to run during CIRP period - Whether since, Committee of Creditors had by a majority vote rejected to raise any interim funds, Adjudicating Authority could not direct Committee of Creditors to do same - Held, yes - Whether therefore impugned direction given by Adjudicating Authority was contrary to provisions of IBC and was to be set aside - Held, yes (Para 28)

### CASE REVIEW

*K. Sashidhar v. Indian Overseas Bank* (2019) 102 taxmann.com 139/152 SCL 312 (SC) (para 28) followed.

*Jet Road Lines India (P.) Ltd. v. EMCO Ltd.* (2021) 127 taxmann.com 693 (Para 29) set aside (see Annex).

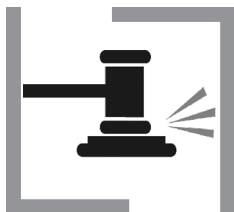
### CASES REFERRED TO

*Savan Godiawala v. Apalla Siva Kumar* (2012) 116 taxmann.com 750 (NCLAT-New Delhi) (para 17) and *K. Sashidhar v. Indian Overseas Bank* (2019) 102 taxmann.com 139/152 SCL 312 (SC) (para 23).

**Sanjeev Kumar, Anshul Sehgal and Abhishek Kisku**, Advs., for the Appellant. **Zain Khan, Ms. Saloni Kothari**, Advs. **Ayush J. Rajani**, PCA, Adv. and **Sundaresh Bhat**, Adv. for the Respondent.

*For Full Text of the Judgment see*  
(2021) 127 taxmann.com 694 (NCLAT - New Delhi)





(2021) 127 taxmann.com 344 (NCLAT - New Delhi)

## NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

**Kolla Koteswara Rao v. Dr. S.K. Srihari Raju**

ANANT BIJAY SINGH, JUDICIAL MEMBER

AND MS. SHREESHA MERLA, TECHNICAL MEMBER

COMPANY APPEAL (AT) (INSOLVENCY) NO. 717 OF 2020†

MARCH 26, 2021

**Section 5(8)** of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Financial debt - Corporate debtor was allotted an industrial land by Telangana State Industrial Infrastructure Corporation (TSIIC) to setup a bulk drug unit, for which corporate debtor availed facility from Lender Bank, SBI for an amount, but on account of default in repayment, loan account was classified as an NPA - A One-Time Settlement (OTS) Agreement was entered into between Lender and corporate debtor for an amount - Corporate debtor and respondent entered into an Agreement of Sale whereunder, corporate debtor agreed to sell to respondent land allotted by TSIIC together with structure and plant and machinery in consideration of respondent paying OTS amount - Respondent paid an amount on behalf of corporate debtor to Lender - As per terms of Agreement to Sell, corporate debtor ought to obtain all necessary permissions including NOC from TSIIC and in event, corporate debtor had failed to do so, corporate debtor had to indemnify financial creditor - TSIIC cancelled allotment - Respondent issued notice to corporate debtor seeking repayment of

amount paid by it to Lender on behalf of corporate debtor along with interest - NCLT by impugned order admitted petition filed by respondent under **section 7** holding that respondent was financial creditor of corporate debtor - Whether amounts paid by respondent on behalf of corporate debtor to Lender Bank for compliance of terms of OTS would fall within definition of financial debt - Held, yes - Whether respondent being a 'Purchaser' under an Agreement to Sell, executed pursuant to an OTS could claim to be a financial creditor as defined under **section 5(7)** - Held, yes - Whether therefore, petition under **section 7** was rightly admitted - Held, yes (Paras 19, 22 & 23)

### FACTS

- ◆ The 'corporate debtor availed a Financial loan from SBI (Lender) for the purpose of setting up a unit for manufacturing bulk drugs, formulation etc.
- ◆ The corporate debtor defaulted in repaying the amounts and was classified as an NPA on 30-11-2012. Subsequently, the Lender filed an



Application under [section 19](#) of the RDDB Act with the Debt Recovery Tribunal, Hyderabad on 23-7-2014 for recovery of an amount.

- ◆ The Lender and the corporate debtor entered into a One-Time Settlement (OTS) on 8-9-2017 for an amount. In compliance with the terms of the OTS letter dated 13-11-2017, the respondent in Agreement with the corporate debtor and on behalf of the corporate debtor, deposited a part of OTS amount.
- ◆ Subsequently, the respondent and the corporate debtor entered into an Agreement of Sale whereby and whereunder the corporate debtor had agreed to sell to the respondent the land allotted by Telangana State Industrial Infrastructure Corporation (TSIIC) together with the structure standing on the property and the plant and machinery, for the same consideration that was agreed between the parties to be the OTS amount payable to the Lender.
- ◆ As per the key terms of the Agreement of Sale, it is stated that the corporate debtor would obtain all the necessary permissions, including obtaining an NOC from TSIIC, the statutory authority, which had allotted the said land to the corporate debtor. It was stated that in the event of not obtaining the NOC, the corporate debtor had to indemnify the respondent by refunding the amount paid together with interest at the rate of 24 per cent per annum.

- ◆ The corporate debtor had failed to commence the Project on time, TSIIC informed the corporate debtor in February 2018 that the said allotment would be cancelled. As the time under the OTS offer letter dated 13-11-2017 had expired in the month of May, 2018 it was stated that the respondent had issued a notice to the corporate debtor in October 2018 seeking repayment of the entire amount paid to the Lender on behalf of the corporate debtor together with interest at the rate of 24 per cent per annum as agreed upon under the Agreement.
- ◆ Since there was no response, an Application under [section 7](#) was filed by the respondent before the NCLT.
- ◆ NCLT by impugned order held that the petitioner was a financial creditor to the corporate debtor. The corporate debtor had not disputed the receipt of the impugned amounts including interest, but had only taken a legal argument, which had found to be not acceptable by the Adjudicating Authority. On the other hand, the petitioner had established the existence of a financial debt which the corporate debtor was liable to pay, but failed to do so and, therefore, the petition was admitted.
- ◆ On appeal:

## HELD

- ◆ There is no illegality or infirmity

- in the observation made by the Adjudicating Authority that issuance of Notice prior to [section 7](#) Application is not mandatory as per the provisions of the Code. Further, the respondent has got issued a legal Notice in October, 2018 prior to filing of the [section 7](#) Application and the same has not been denied by the appellant. With regard to the second objection raised by the appellant that 'K' has not been made a party and therefore, the petition ought to have been dismissed for non-joinder of parties cannot be sustained as it can be seen from the 'Agreement of Sale' that it is executed only between the appellant and the respondent and there is no privity of contract with the said 'K' and therefore, she is not a necessary party to adjudicate this matter. (Para 14)
- ◆ From the agreement, it is evident that though money has been paid under an Agreement to Sell, it is seen that the same was paid by the respondent to the Lender Bank only on behalf of the corporate debtor and furthermore in the event of the failure on the part of the corporate debtor to adhere to the terms of the agreement, the said consideration amount was to be repaid by the corporate debtor along with interest in the event the transaction did not materialize. It is seen from the record that a right to Payment accrued to the respondent in terms of the Agreement. (Para 16)
  - ◆ The Supreme Court in the case of *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* (2019) 108 taxmann.com 147/155 SCL 622 (SC), has clearly held that sub-clause (f) of section 5(8) is a 'Residuary Provision' which is 'catch all in nature'. It is observed that amounts that are raised in transactions would amount to a financial debt if they had 'a commercial effect of borrowing'. (Para 18)
  - ◆ The agreement, specify that the respondent shall make the payment of the consideration directly to the Lenders towards the amount payable under the OTS by the corporate debtor. The consideration for the purchase of the Scheduled Property structure together with the plant and machinery standing thereon shall move to the Lender from the respondent, at the instance of the corporate debtor. Hence, it is seen that the Agreement to Sell emanates from the One Time Settlement entered into between the corporate debtor and the Lender Bank and it is only in lieu of the consideration paid by the respondent to the Lender Bank on behalf of the corporate debtor, that the Agreement of Sale for the subject property was executed. Therefore, the contention of the appellant that the money was not utilized by the corporate debtor, but paid to the Lender and as the utilization of money by the corporate debtor is a *sine qua*

non and therefore, the 'debt' does not fall within the definition of 'Transaction' as defined under [section 3\(33\)](#) or under 'Financial Debt' as defined under [section 5\(8\)\(f\)](#), is untenable. A combined reading of [sections 5\(8\), 3\(33\), 3\(11\)](#) and [3\(6\)](#) together with the admitted fact that the amount was paid by the respondent on behalf of the corporate debtor to the Lender Bank pursuant to the time bound OTS Settlement and further clause 12 of the Agreement to Sell stipulates that the corporate debtor shall refund the amount with 24 per cent interest per annum in case of failure on their behalf to execute and register the sale deed, establishes that the 'debt' in the instant case satisfies the three fold criteria viz. (a) 'disbursal' (b) 'time value of money' (c) 'commercial effect of borrowing' and therefore the ratio laid down by the Apex Court with respect to 'Financial Debt' in *Pioneer Urban Land and Infrastructure Ltd.'s case* (supra) is squarely applicable to the facts of this case. (Para 19)

- ◆ As regard, the argument of the appellant that there was no 'Profit' involved, it is only because of the One-Time Settlement entered into between the Lender Bank and the corporate debtor, that the corporate debtor had benefitted in terms of waiver of interest, payment of a lesser amount of

Rs. 11.70 crores as against the ledger outstanding amount of Rs. 16.72 crores and, therefore, it has to be safely construed that the corporate debtor has benefitted/ profited from the said transaction. (Para 20)

- ◆ Thus, the debt in question is a financial debt. It was also pleaded that the specific intention of the respondent was to take over the land with the structures and the plant and machinery so as to commence the business for which purpose the land was initially allotted by TSILC. Hence, it can be safely construed that the respondent cannot be said to be having only a security interest over the assets of the corporate debtor. Keeping in view the facts of the attendant case, it is opined that the debt is a financial debt and the respondent a financial creditor. (Para 22)
- ◆ In the result, the appeal fails and is accordingly dismissed. (Para 23)

## CASE REVIEW

[Dr. S.K. Srihari Raju v. Lease Life Services \(P.\) Ltd. \(2021\) 123 taxmann.com 367 \(NCLT - Hyd.\)](#) (para 23) *affirmed*.

[Pioneer Urban Land and Infrastructure Ltd. v. Union of India \(2019\) 108 taxmann.com 147/155 SCL 622 \(SC\)](#) (para 19) *followed*.

[Anuj Jain v. Axis Bank Ltd. \(2020\) 115 taxmann.com 1 \(SC\)](#) (para 22) *distinguished*.

**CASES REFERRED TO**

*Pioneer Urban Land and Infrastructure Ltd. v. Union of India* (2019) 108 taxmann.com 147/155 SCL 622 (SC) (para 5), *Anuj Jain v. Axis Bank Ltd.* (2020) 115 taxmann.com 1 (SC) (para 5) and *Innoventive Industries*

*Ltd. v. ICICI Bank* (2017) 84 taxmann.com 320/143 SCL 625 (SC) (para 14).

**Aditya Vijaykumar**, **Namrata Mohapatra** and **Koteswar Rao Kolla**, Advs. for the Appellant. **Kailash Nath**, **Mithun Shashank** and **Pankaj Bhagat** (RP) for the Respondent.

† Arising from order of *Dr. Srihari Raju v. Lease Life Services P. Ltd.* (2021) 123 taxmann.com 367 (NCLT-Hyd.)

*For Full Text of the Judgment see*  
**(2021) 127 taxmann.com 344 (NCLAT - New Delhi)**



(2021) 127 taxmann.com 696 (NCLAT- New Delhi)

## NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

**State Bank of India v. Visa Steel Ltd.**

VENUGOPAL M., JUDICIAL MEMBER

AND KANTHI NARAHARI, TECHNICAL MEMBER

COMPANY APPEALS (AT)(INSOLVENCY)294-295 OF 2020†

MARCH 15, 2021

**Section 7** of the Insolvency and Bankruptcy Code, 2016, read with **section 35AA** of the Banking Regulation Act, 1949 - Corporate insolvency resolution process - Initiation by financial creditor - Central Government vide Gazette Notification No. S.O. 1435(E), dated 5-5-2017 authorized Reserve Bank of India (RBI) to issue directions to any banking company or banking companies to identify specific cases on default for 'resolution' and if 'resolution' fails for initiation of proceedings under IBC - Based on gazette notification, RBI directed appellant-Bank to initiate proceeding under IBC, against some of defaulters including respondent-corporate debtor - Whether in view of above, by no stretch of imagination it could be said that direction given by RBI was without authorization from Central Government and, therefore, application under **section 7** filed by appellant against corporate debtor was justified - Held, yes (Paras 72 and 85)

### Case Review

*State Bank of India v. Visa Steel Ltd.* (2021) 127 taxmann.com 695 (NCLT-Cuttack) (para 77) reversed (See annex.)

### CASES REFERRED TO

*Dharani Sugars & Chemicals Ltd. v. Union of India* (2019) 104 taxmann.com 44/153 SCL 24 (SC) (para 4), *State Bank of India v. Visa Steel Ltd.* (Appeal No. 3169 of 2019, dated 29-7-2019) (para 30), *M.P. Steel Corpn. v. CCE* (2015) 7 SCC 58 (para 31), *Sunitha Devi Singhania Hospital Trust v. Union of India* (2008) 16 SCC 365 (para 36), *Asstt. CIT v. Sourashtra Kutch Stock Exchange Ltd.* (2008) 173 Taxman 322/305 ITR 227 (para 36), *Honda Siel Power Products Ltd. v. CIT* (2007) 12 SCC 596 (para 36), *Santosh Wasantrao Walokar v. Vijaya Kumar V. Iyer* (2020) 118 taxmann.com 151/(2021) 164 SCL 60 (NCL - AT) (para 36), *Union of India v. West Coast Paper Mills Ltd.* (2004) 3 SCC 458 (para 36), *Ayisu & 6 Others v. Saitu 6 Others* (2015) 1 KLJ 755 (para 36), *Thiru Mareddi Raja Rao v. State of Andhra Pradesh* AIR 1965 AP 388 (para 36), *Bank of Bihar v. Damodar Prasad* AIR 1969 SC 297 (para 37), *Dr. Vishnu Kumar Agarwal v. Piramal Enterprises Ltd.* (2019) 101 taxmann.com 464/151 SCL 555 (NCL - AT) (para 49), *IFCI Ltd. v. Golf Technologies (P.) Ltd.* (2019)



110 [taxmann.com](#) 17 (NCL - AT) (para 49), *Bijay Kumar Agarwal v. State Bank of India* (2020) 118 [taxmann.com](#) 48 (NCL - AT) (para 49), *Kalabharathi Advertsing v. Hemanth Vimalnath Narichania* (2010) 9 SCC 437 (para 51), *Perfect Enterprises v. National Highway Authority of India* MANU (UP) 1302/2012 (para 52), *Amod Amladi v. Mrs. Sayali Rane* (Comp APP (AT) (Ins.) No. 295 of 2017, dated 30-11-2017) (para 54), *Bablu Ghosh v. Amrit Fresh (P.) Ltd.* 2016 (3) CHN (Cal.) 214 (para 55), *Kitply Industries v. Kotak Mahindra Prime Ltd.* MANU (WB) 815/2018 (para 57), *Manohar v. Jaipal Singh* (2008) 1 SCC 520 (para 58), *Dinesh Goyal v. DCB Bank Ltd.* (Company APP (AT) (INS) No.702 of 2019, dated 10-

7-2019) (para 59), *Maharashtra State of Electricity Board v. Official Liquidator* (1982) 3 SCC (para 62), *Piramal Enterprises Ltd. v. Vishnu Kumar Agarwal* (Civil Appeals No. 878 of 2019 and 1678 of 2019, dated 15-4-2019) (para 63) and *Nisus Finance & Investment Manager LLP v. Shabad Khan* (Civil Appeal No. 2807 of 2020, dated 9-9-2020) (para 63).

**Arun Kathpalia, Mukul Rohatgi, Sr. Adv. Siddhartha Datta, Deepanjan Dutta Roy, Ms. Misha, Ms. Suhani Diwedi, Ms. Diksha Gupta and Ms. Moulshree Shukla, Adv. for the Appellant. S.N. Mookherjee, Sr. Adv. Sabyasachi Chaudhury and Ms. Nikita Jhunjhunwala, Adv. for the Respondent.**

† Arising out of order of NCLT in *State Bank of India v. Visa Steel Ltd.* (2021) 127 [taxmann.com](#) 695 (NCLT-Cuttack)

For Full Text of the Judgment see  
(2021) 127 [taxmann.com](#) 696 (NCLAT- New Delhi)



(2021) 127 taxmann.com 692 (NCLAT - New Delhi)

## NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI BENCH

**Ram Ratan Kanoongo v. Veda Kumar Nimbagal**

A.I.S. CHEEMA, JUDICIAL MEMBER

AND V.P. SINGH, TECHNICAL MEMBER

COMPANY APPEAL (AT) (INSOLVENCY) NO. 906 OF 2020†

MARCH 17, 2021

**Section 31**, read with **section 53** of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution Plan - Approval of - In pursuance to commencement of CIRP of corporate debtor, respondent-ex-director of corporate debtor submitted his claim with Resolution Professional (RP) seeking release of his claim towards payment of salary for period 23-1-2017 to 20-10-2017- RP partially admitted claim based on calculation of salary dues up to date of commencement of Corporate Insolvency Resolution Process i.e. 18-9-2017 and rejected claim for period 19-9-2017 to 20-10-2017 - Meanwhile, resolution plan for corporate debtor was approved by Adjudicating Authority - Thereafter, respondent filed application before Adjudicating Authority seeking payment of outstanding salaries i.e. from 19-9-2017 to 20-10-2017- Whether any claim for CIRP period had to be raised before approval of a resolution plan and no direction could be issued to erstwhile Resolution Professional in respect of said claim - Held, yes - Whether further, successful resolution applicant could not be burdened with claim/dues of corporate debtor - Held, yes - Whether thus, Adjudicating Authority had erred in issuing directions to erstwhile RP to make

payment of salary to respondent - Held, yes (Paras 39 and 40)

### CASE REVIEW

*Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2019) 111 taxmann.com 234 (SC) (para 19) followed.

*Veda Kumar Nimbagal v. Ram Ratan Kanoongo* (2021) 127 taxmann.com 691 (NCLT-Hyd.) (para 40) set aside (See Annex.)

### CASES REFEREED TO

*Committee of Creditors of Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta* (2019) 111 taxmann.com 234 (SC) (para 19), *Standard Chartered Bank v. Satish Kumar Gupta* (2019) 105 taxmann.com 165/153 SCL 421 (NCL-AT) (para 20) and *State of Haryana v. Uttam Strips Ltd.* (Company Appeal (AP) (Ins) No. 319 of 2020, dated 23-6-2020) (para 34).

**Rajendra Beniwal, Kumar Sumit and Chirag Gupta**, Advs., for the Appellant. **C.H. Kameswara Rao**, Adv., **Vaijayant Paliwal**, **Charu Bansal**, **Ms. Misha** and **Ms. Jasveen Kaur**, Advs., for the Respondent.

† Arising out of order in *Veda Kumar Nimbagal v. Ram Ratan Kanoongo* (2021) 127 taxmann.com 691 (NCLT-Hyd.)

For Full Text of the Judgment see

(2021) 127 taxmann.com 692 (NCLAT - New Delhi)



# Code and Conduct of Insolvency Professionals Timelines

## 1. Introduction

Before the enactment of Insolvency and Bankruptcy Code, 2016, insolvency resolution in India took 4.3 years on an average which was much higher than other countries such as the United Kingdom (12 months) and United States of America (18 months). The reason was poor enforcement mechanism, slow court process and staggered business rescue measures. Indian insolvency and recovery regime prior to the Insolvency and Bankruptcy Code, 2016 was multi-layered with multiple fora for adjudication which resulted in undue delay in resolution, conflicting judgments and erosion of investor's confidence.

On 28th May, 2016, the Insolvency and Bankruptcy Code, 2016 was enacted with the prime objective to rescue Corporate Debtors in distress. The Code specifies **a time-bound insolvency resolution process, which needs to be completed within 330 days including any litigation.**

The Preamble of the Code states as follows:

*"An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals **in a time bound manner for maximization of value of assets of such persons**, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto."*

Since the enactment of Code, the time taken to resolve insolvency in India, as of 2019, has come down to 1.6 years on an average. Speed is the essence of the IBC, the longer the corporate insolvency resolution process, the more will be chances of liquidation. Also, liquidation value reduces with time. Therefore, an Insolvency Professional must endeavour to adhere with the time limits prescribed in the Code. Merely compliance with the provisions after the timelines prescribed cannot be treated as compliance of law.

## 2. Code and Conduct

With reference to Timelines, the Code and Conduct of Insolvency Professional provides that:

- ◆ An insolvency professional must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan his actions, and

promptly communicate with all stakeholders involved for the timely discharge of his duties;

- ◆ An insolvency professional must not act with *mala fide* or be negligent while performing his functions and duties under the Code.

## 3. Statutory Provisions

Time limit for completion of CIRP

[Section 12\(1\)](#) of the Insolvency and Bankruptcy Code, 2016 provides that:

"Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of **one hundred and eighty days** from the date of admission of the application to initiate such process."

Extension of the time limit

[Section 12\(2\) & \(3\)](#) of the Insolvency and Bankruptcy Code, 2016 provides that:

"(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such

process beyond one hundred and eighty days by such further period as it thinks fit, but **not exceeding ninety days**.

**Provided** that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once."

#### 4. Cap on CIRP time limit

The Insolvency and Bankruptcy Code (Amendment) Act, 2019 (Amendment Act), w.e.f. 16.08.2019, inserted two provisos to [section 12\(3\)](#) of the Code to provide for overall time limit as under:

**"Provided further** that the corporate insolvency resolution process shall mandatorily be completed within a period of **three hundred and thirty days** from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

**Provided also** that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019."

#### 5. Model Timeline

Besides an overall timeline for the process,

the Code also mandates a timeline for various sub-processes such as, *inter alia*, publishing a public announcement of insolvency, conducting valuation of the corporate debtor, conducting transaction audit of the corporate debtor etc. Model timelines are prescribed under the [regulation 40A](#) of the CIRP Regulation, 2016.

#### 6. Recommendations of Bankruptcy Law Reforms Committee

The BLRC noted that:

"Speed is of essence for the working of the bankruptcy code, for two reasons. First, while the 'calm period' can help keep an organisation afloat, without the full clarity of ownership and control, significant decisions cannot be made. Without effective leadership, the firm will tend to atrophy and fail. The longer the delay, the more likely it is that liquidation will be the only answer. Second, the liquidation value tends to go down with time as many assets suffer from a high economic rate of depreciation. From the view point of creditors, a good realisation can generally be obtained if the firm is sold as a going concern. Hence, when delays induce liquidation, there is value destruction. Further, even in liquidation, the realisation is lower when there are delays. Hence, delays cause value destruction. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of Delay."

The BLRC also identified and addressed sources of delay. It noted that:



"Before the IRP can commence, all parties need an accurate and undisputed set of facts about existing credit, collateral that has been pledged, etc. Under the present arrangements, considerable time can be lost before all parties obtain this information. Disputes about these facts can take up years to resolve in court. The objective of an IRP that is completed in no more than 180 days can be lost owing to these problems. Hence, the Committee envisions a competitive industry of "information utilities" who hold an array of information about all firms at all times. When the IRP commences, within less than a day, undisputed and

complete information would become available to all persons involved in the IRP and thus address this source of delay. The second important source of delays lies in the adjudicatory mechanisms. In order to address this, the Committee recommends that the National Company Law Tribunals (for corporate debtors) and Debt Recovery Tribunals (for individuals and partnership firms) be provided with all the necessary resources to help them in realising the objectives of the Code."

### **Findings of the Disciplinary Committee of IBBI with regard to non-compliance of timelines by the Insolvency Professionals**

S. No.	Contravention	Findings
1.	The Voluntary Liquidation of the CD commenced on January 15, 2018 while the liquidator made the public announcement in newspapers on June 27, 2019 i.e. after a delay of 18 months (approx.) and hence failed to adhere to prescribed timelines.	The Liquidator was imposed a penalty of INR 1,00,000/- and he is debarred from performing any action under the code until the penalty was deposited.
2	The IRP failed and neglected to consider the claim of Operational Creditor	The IP disregarded his statutory duty under <a href="#">section 18(1)(b)</a> of the Code, which mandates him to receive and collate all claims and the timeline provided under the Code and there by contravened clause 13 of the Code of Conduct which mandates him to adhere to timeline. This failure on the part of the IRP was considered serious dereliction of the duty cast on an IP and a penalty equal to one tenth of the total fee payable to him as IRP and RP in the case was imposed.
3	The RP took extra-ordinary time to file an application under <a href="#">section 66</a> of the Code after the forensic audit report was submitted to him even though an RP has the highest professional responsibility during CIRP	In the absence of any statutory mandate prescribing definite timelines for filing application under <a href="#">section 66</a> of the Code, the RP could not be held liable for filing the application belatedly. However, it cannot be disputed that he acted negligently and failed to acknowledge the importance of timelines during CIRP.



4	The RP had not taken any action for 245 days towards correcting the unauthorised transaction until the Inspecting Authority pointed out the issue and no discussions before CoC were held regarding such unauthorised transaction of transfer of money to a group company post insolvency commencement date or any action to be taken thereof.	The RP has shown a casual attitude towards his responsibilities and adequate measures were not taken to reverse the transaction and hence he acted in violation of <a href="#">Sections 25(1), 208(2)(a) &amp; (e)</a> of the Code and <a href="#">Regulation 7(2)(a) and 7(2)(h)</a> of the IP Regulations, readwith clause 14 of the Code of Conduct.
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## 7. Judicial Rulings

**Timelines provided in proviso to sub-section (5) of [Section 7](#) or proviso to sub-section (5) of [Section 9](#) or proviso to sub-section (4) of [Section 10](#) are directory not mandatory**

In the matter of [Suresh Trading Co. v. Juggilal Kamlatpat Jute Mills Co.](#) (2017) 85 taxmann.com 372/144 SCL 198, the Hon'ble Supreme Court held that the timelines provided in sections 7, 9 and 10 of the Code, for deciding a matter within 14 days as well as the time to remove a defect within 7 days, are directory and not mandatory.

## 8. Extension of time period beyond 330 days in exceptional cases

In the matter of [Committee of Creditors of Essar Steel \(India\) Ltd. v. Satish Kumar Gupta](#) (2019) 111 taxmann.com 234, the Hon'ble Supreme Court held that "ordinarily the time taken in CIRP must be completed within the time limit of 330 days from the insolvency commencement date, including the time taken in litigation process. However, in few cases where it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short time is left in completion of corporate insolvency resolution process beyond 330 days, and it would be interest

*of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days."*

## 9. Exclusion of certain period for the purpose of counting the total period of 180/270 days

In the matter of [Quinn Logistics India \(P.\) Ltd. v. Mack Soft Tech \(P.\) Ltd.](#) (2018) 96 taxmann.com 63, the Hon'ble NCLAT held that for following good grounds and unforeseen circumstances, the intervening period can be excluded for counting of the total period of 270 days of resolution process:

- i. If the CIRP is stayed by 'a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court;

- ii. If no 'RP' is functioning for one or other reason during the CIRP, such as removal;
- iii. The period between the date of order of admission/moratorium is passed and the actual date on which the 'RP' takes charge for completing the CIRP;
- iv. On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the 'Resolution Professional' to complete the CIRP;
- v. If the CIRP is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and CIRP is restored;
- vi. Any other circumstances which justifies exclusion of certain period.

In various cases the adjudicating authority excluded certain period for the purpose of counting the total period of 180/270 days.

## 10. Conclusion

The timeline of 330 days has been breached in various cases but it cannot be

generalised that delay is due to inadequate capacity of NCLT and Non-Co-operation by the Corporate Debtor. An Insolvency Professional must ensure that he plans all the actions well in advance, communicate to stakeholders and all the steps involved in corporate insolvency resolution process are completed in time bound manner to better preserve economic value.

## 11. References

Sharma, Anjali and Susan Thomas (2015), Evolution of the bankruptcy framework for enterprises in India, Working paper, FRG, IGIDR

Time to resolve insolvency (years) <https://data.worldbank.org/indicator/IC.ISV.DURS>

IBBI - Handbook on Ethics for Insolvency Professionals: Ethical and Regulatory Framework

IBBI Disciplinary Committee Case No. IBBI/DC/20/2020; Order dt. March 20, 2020

IBBI Disciplinary Committee Case No. IBBI/Ref-Disc.Comm./02/2018; April 13, 2018

IBBI Disciplinary Committee Case No. IBBI/DC/18/2020; February 27, 2020

IBBI Disciplinary Committee Case No. IBBI/DC/25/2020; Order dt. June 2, 2020



# FAQs on Forms to be filed during CIRP

## 1. Which form has to be filed for Public Announcement?

As per [Regulation 6](#) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, IRP shall make Public Announcement in Form A.

## 2. In which form shall an Insolvency Professional give written consent to act as a Resolution Professional?

As per [Regulation 3\(1A\)](#) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016 an IP shall give written consent to act as Resolution Professional in Form AA.

## 3. Which form is required to be filed to give written consent to act as Authorized Representative?

As per [Regulation 4A\(3\)](#) of IBBI (Insolvency Resolution for Corporate Persons)

Regulations, 2016 Form AB is required for the written Consent to act as Authorized Representative.

## 4. What forms are to be submitted by Financial and Operational Creditors for submission of proof of Claims?

As per [Regulation 7](#) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, proof of claim by Operational Creditors except workmen and employees shall be submitted in Form B.

As per [Regulation 8](#) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, proof of claim by Financial Creditors shall be submitted in Form C.

Further, as per [Regulation 8A](#) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, proof of claim by Financial Creditors in a class shall be submitted in Form CA.

### 5. Who shall submit proof of claims in Form D?

As per [Regulation 9](#) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, a workman or an employee shall submit its proof of claims in Form D.

### 6. In which form proof of claims by Authorized Representatives of Workmen and Employees have to be submitted?

As per [Regulation 9](#) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, proof of claims by Authorized Representatives of Workmen and Employees have to be submitted in Form E.

### 7. Who shall file Form E?

As per [Regulation 9A](#) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, creditors (other than financial and operational creditors) shall file Form E.

### 8. Which Form has to be filed for Application for withdrawal of corporate insolvency resolution process?

As per [Regulation 30A](#) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, Form FA is required to be filed for Application for withdrawal of corporate insolvency resolution process.

### 9. In which Form Invitation for Expression of Interest has to be made?

As per [Regulation 36A \(1\)](#) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, invitation for Expression of Interest has to be made in Form G.

### 10. How Compliance Certificate shall be submitted by the Resolution Professional?

As per [Regulation 39\(4\)](#) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, Compliance Certificate has to be submitted in Form H.

### 11. Who shall file Form IP-1 on the website of IBBI?

An IP shall give consent in form IP-1 to accept assignment as an IRP or RP.

### 12. What are the CIRP forms that have to be filed as per Regulation 40B of CIRP Regulations?

Following Forms have to be submitted:

Forms	Period Covered
CIRP 1	From Commencement of CIRP till Issue of Public Announcement
CIRP 2	From Public Announcement till replacement of IRP
CIRP 3	From Appointment of RP till Issue of Information Memorandum (IM) to Members of CoC
CIRP 4	From Issue of IM till issue of Request for Resolution Plans (RFRP)
CIRP 5	From Issue of RFRP till completion of CIRP
CIRP 6	Event Specific Form



### 13. What is the requirement of submission of Form CIRP-7?

As per [Regulation 40B\(1A\)](#) of CIRP Regulations if any of the CIRP Forms 1-6 have not been submitted within the specified period the interim resolution professional

or resolution professional, as the case may be, shall file Form CIRP 7 within three days of the said date, and continue to file Form CIRP 7, every 30 days, until the said activity remains incomplete.

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## Regulatory updates (March, 2021)

1. IBBI extended the validity of Insolvency and Bankruptcy Board of India (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020 till 30th September, 2021.
2. IBBI notifies the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2021.
3. IBBI notifies the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021
4. IBBI issues circular dt. 4th March, 2021 concerning filing of list of stakeholders under clause (d) of sub-regulation (5) of [regulation 31](#) of the IBBI (Liquidation Process) Regulations, 2016.
5. IBBI issued circular dt. 18th March, 2021 concerning Reporting of status of ongoing corporate insolvency resolution processes (CIRPs) through Form CIRP 7.



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## Insolvency Law in Germany

The German Insolvency Code and the European Regulation on Insolvency Proceedings (2015/848) are the primary pieces of legislation governing insolvency proceedings in Germany. So far, there are no pre-insolvency restructuring proceedings regulated by statute under German law. Restructuring proceedings outside of insolvency proceedings are basically directed by the regular corporate and labor law regulations. On 18 September, 2020 the Federal Ministry of Justice presented a draft bill on the pre-insolvency restructuring framework (Act on the Stabilization and Restructuring Framework for Businesses). The law will come into effect on 1 January, 2021.

The purpose of German insolvency proceedings is to jointly satisfy the creditors by utilizing the assets and distributing the proceeds, or by deviating from an insolvency plan, in particular to preserve the company. The honest debtor is given the opportunity to free himself from his remaining liabilities. The German Insolvency regime is regulated by the Germany Insolvency Code ("InSO"). It is centralized on federal level. Thus, the 16 single states of Germany do not have their own applicable insolvency law. Insolvencies in Germany are mainly



governed by the Insolvency Code ("Code") which was enacted on 5<sup>th</sup> October, 1994 which applies to all regardless of which industry a debtor is in.

## COMPARATIVE CHART – GERMANY AND INDIA

Comparative Chart		
Basis	Germany Insolvency Code ("InSO")	Insolvency and Bankruptcy Code, 2016
<b>Adjudicating Authorities</b>	<p>For the insolvency proceedings, the district court, in the district of which a regional court has its seat, is exclusively responsible as the bankruptcy court for the district of this regional court.</p> <p>The sole jurisdiction is the insolvency court in whose district the debtor has his general place of jurisdiction. If the focus of an independent economic activity of the debtor is at a different location, then only the insolvency court in whose district this location is located is responsible. If more than one court has jurisdiction, the court that first applied for bankruptcy proceedings excludes the others.</p>	<p>National Company Law Tribunal (Adjudicating Authority) and Appeals are filed before National Company Law Appellate Tribunal (Appellate Authority).</p> <p>The appeal against the order of NCLT may be filed at NCLAT.</p>
<b>Appointments of Insolvency Professionals in case of resolution and liquidation process</b>	<ul style="list-style-type: none"> <li>◆ Formal Insolvency Proceedings - Preliminary Insolvency Administrator followed by Final Insolvency Administrator</li> <li>◆ Insolvency Plan Proceedings-Administrator</li> <li>◆ Self Administration: Custodian</li> <li>◆ Liquidation – Liquidator</li> <li>◆ Voluntary Liquidation- Liquidator</li> </ul>	<ul style="list-style-type: none"> <li>◆ Corporate Insolvency Resolution Process - Interim Resolution Professional followed by Resolution Professional</li> <li>◆ Fast Track Insolvency Resolution Process - Interim Resolution Professional followed by Resolution Professional</li> <li>◆ Liquidation - Liquidator</li> <li>◆ Voluntary Liquidation - Liquidator</li> </ul>
<b>Initiation of resolution process</b>	Debtor company itself or creditors	Financial Creditor, Operational Creditor or Corporate Debtor itself

<b>Possession of the insolvent company's assets in case of resolution process</b>	<ul style="list-style-type: none"> <li>◆ Formal Insolvency Proceedings - Insolvency Administrator</li> <li>◆ Insolvency Plan Proceedings: Insolvency Administrator</li> <li>◆ Self Administration-Debtor</li> </ul>	Insolvency Professional as IRP/ RP, to be appointed by the Adjudicating Authority. Board of directors gets suspended with the appointment of IRP
<b>Consent of Committee of creditors in case of resolution process</b>	Approval of the plan requires majority in each group of creditors along with the sum of the claims approving the plan exceeds half of the sum of all claims of the voting creditors in that group.	Approval of resolution plan requires vote of not less than Sixty Six per cent of voting share of the financial creditors.
<b>Priorities of the payments - to be read from top to bottom in the order of priorities</b>	<ul style="list-style-type: none"> <li>- Creditors with rights of separation</li> <li>- Secured Creditors</li> <li>- Estate Creditors</li> <li>- Insolvency Creditors</li> <li>- Equity Holders</li> </ul>	<ul style="list-style-type: none"> <li>- Insolvency cost</li> <li>- workmen dues for 24 months</li> <li>- Secured creditors</li> <li>- Employees for preceding 12 months</li> <li>- Unsecured creditors</li> <li>- State dues or secured creditors for any amount unpaid</li> <li>- any remaining debts &amp; dues</li> <li>- Preference shareholders</li> <li>- Equity holders</li> </ul>
<b>Cross Border Insolvency</b>	<p>The provisions of International Insolvency Law along with European Insolvency Regulation set the rules for cross-border insolvencies, in which the debtor has its centre of main interest in one of the Member States of the EU.</p> <p>UNCITRAL Model Law on Cross-Border Insolvency not adopted.</p>	<p><a href="#">Sections 234</a> and <a href="#">235</a> of IBC contain details of cross border insolvency in India. It gives power to the that the Central Government can make any agreements with the foreign country to start with the insolvency proceedings.</p> <p>UNCITRAL Model Law on Cross-Border Insolvency has been recommended but not yet been adopted.</p>

<b>Group Insolvency framework</b>	Germany has group insolvency systematic framework for group insolvencies.	In India, the Code is silent about group insolvency; however, the courts are trying to fill in this lacuna through judicial pronouncements. Group Insolvency can be tackled by either Procedural Co-ordination or Substantive Consolidation.
<b>Liquidation and Voluntary Liquidation</b>	Provisions and relating Regulations have been enacted under the Code. The Insolvency professionals act as liquidators and a stakeholders consultation committee is formed.	Voluntary liquidations are only available to a solvent company to allow it to wind up its business. The shareholders will appoint a professional liquidator to organise the winding up. After the successful liquidation and the company's dissolution, the company will be removed from the Commercial Register.

## COVID-19 REFORMS

Under German Insolvency Laws there have been reforms introduced like suspension to file bankruptcy till 30th September, 2020. The obligation to file for insolvency due to overdebteness has been suspended. There are, however, two exceptions to the suspension. The obligation to file for insolvency remains in force if (i) the reasons for insolvency (i.e., the inability to pay or over-indebtedness) are not the result of the COVID-19 pandemic, and (ii) there are no prospects of eliminating the inability to pay.

Newly granted loans from banks and other lenders will be protected in order to motivate them to provide additional liquidity to companies in distress. Repayments of

such loans until September 30, 2023, will not be considered disadvantageous to creditors, and cannot be challenged. Such loans will also no longer be subject to subordination in insolvency proceedings. Such limitation of lenders' liability and avoidance risks in relation to loans provided in the suspension period, i.e. until 30th September, 2020 to cash flow insolvent companies and until 31st December, 2020 to over-indebted companies (which may be extended). This includes not only loans but also trade credits and other forms of deferred payments and services. The provision applies also to the repayment of shareholder loans. However, it does not apply to security granted for shareholder loans; security for shareholder loans is not privileged.

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